

WSR 10-10-121
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Disability Services Administration)
 [Filed May 5, 2010, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-087.

Title of Rule and Other Identifying Information: Chapter 388-71 WAC, Home and community services and programs; chapter 388-112 WAC, Residential training; chapter 388-829A WAC, Alternative living; and chapter 388-829C WAC, Companion homes.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 6, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 7, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS.RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 6, 2010.

Assistance for Persons with Disabilities: Contact Jennifer Johnson, DSHS rules consultant, by June 22, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 74.39A RCW requires training for long-term care workers which includes seventy-five hours of entry-level training before a long-term care worker is eligible to provide care and also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually.

The purpose of the new language in chapters 388-71, 388-112, 388-829A, and 388-829C WAC is to implement and clarify the training requirements and the criminal history background check requirements.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.39A.360.

Statute Being Implemented: RCW 74.39A.360.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Brubaker, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2540.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

The home and community services division is adopting amendments to chapters 388-71 and 388-112 WAC as expressly required by Initiative Measure No. 1029, chapter 580, Laws of 2009, and so that these rules are consistent with the training and certification requirements set forth in Initiative 1029 and E2SHB 2284, chapter 361, Laws of 2007. Therefore, pursuant to RCW 19.85.025(3) and 34.05.310 (4)(e), a small business economic impact statement (SBEIS) is not required pursuant to chapter 19.85 RCW. Also, pursuant to RCW 34.05.328 (5)(b), an evaluation of the costs and benefits of adoption of the rule pursuant to RCW 34.05.328 is not required. Nevertheless, the following analysis is provided for informational purposes.

SUMMARY OF PROPOSED RULES: In 2007, the legislature passed RCW 74.39A.360 creating the Taft-Hartley Training Trust (trust) to operate a training partnership. The training partnership is a nonprofit 501(c)3 formed to train and develop professional long-term care workers to deliver high quality care and support to older adults and people with disabilities. RCW 74.39A.360 also increased continuing education requirements for long-term care workers from ten to twelve hours, added twelve hours optional peer mentoring, and mandated the department to offer sixty-five hours of optional advanced training. In addition, it expanded the definition of "long-term care worker" to include most caregivers who work in home and community-based services settings, including:

- Individual providers of home care services,
- Direct care employees of home care agencies,
- Providers of home care services to persons with developmental disabilities under Title 71 RCW, and
- All direct care workers in state-licensed:
 - ◆ Boarding homes.
 - ◆ Adult family homes.
- Respite care providers,
- Community residential service providers, and
- Any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

In 2008, an initiative increasing basic training from thirty-two hours to seventy-five hours was placed on the ballot for consideration by Washington voters. It stated "current procedures to train and educate long-term care workers and to protect the elderly are insufficient." In November 2008, Initiative 1029 was voted on and approved by Washington state voters.

With the implementation of 1029, the department of social and health services (DSHS) is amending and adopting new rules in chapters 388-112 and 388-71 WAC to conform to E2SHB 2284 and Initiative 1029 as follows:

- Increase basic training hour requirements from thirty-two hours to seventy-five hours.
- Increase continuing education hour requirement from ten to twelve hours annually.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT: Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines

small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

With some exceptions, preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

Though an SBEIS is not required for adoption of these rules, pursuant to RCW 19.85.025(3) and 34.05.310 (4)(e), for informational purposes the department has analyzed the proposed rule amendments and has determined that small businesses will be impacted by these changes, with some costs considered "more than minor" and disproportionate to small businesses. However, these costs primarily result from the increased training requirements brought about by E2SHB 2284 and Initiative 1029, not from these conforming amendments to the department's training rules.

Though not required for adoption of these rules, the department has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs. The department's analysis shows the costs and benefits of the proposed rules to those impacted by the rules. Again, these costs primarily result from the increased training requirements brought about by E2SHB 2284 and Initiative 1029, not from these conforming amendments to the department's training rules. Impacted groups include:

- Adult family home providers.
- Boarding homes with fewer than fifty employees.
- Home care agencies with fewer than fifty employees.

INDUSTRY ANALYSIS: The department keeps a current internal data base that identifies all affected small businesses. Using this data base gives more accurate information about impacted small businesses for this analysis than the four-digit NAICS codes.

The department has determined that there are approximately three thousand three hundred ninety-six existing agencies that meet the criteria for small businesses under RCW 19.85.020. These proposed rules impact:

- Adult family home providers.
- Boarding homes with fewer than fifty employees.
- Home care agencies with fewer than fifty employees.

INVOLVEMENT OF SMALL BUSINESSES: Many small businesses have been involved in writing the proposed rules and in ascertaining the costs associated with proposed rule changes. The department engaged assistance of external stakeholders, which included representation from small businesses, and met and talked several times with a number of small businesses to consider costs that would impact their businesses. In addition, a survey was mailed to a twenty-five percent random sampling of the three thousand three hundred ninety-six businesses across the state of Washington impacted by the changes. Data was reviewed and analyzed for the purposes of completing the cost-benefit analysis (CBA) and SBEIS.

There are currently two thousand eight hundred forty-two adult family homes in Washington state. The department completed a random sample mailing to twenty-five percent of these homes and received a seventeen percent response rate.

Of the seventeen percent who responded to the survey, seventy-three percent met the definition of "small businesses" within the meaning of RCW 19.85.011.

There are currently five hundred fifty-four boarding homes in Washington state. The department completed a random sample survey mailing to twenty-five percent of these homes and received a twenty-six percent response rate. Of the twenty-six percent who responded, seventy-two percent met the definition of "small businesses" within the meaning of RCW 19.85.011.

There are currently three hundred eighty-one home care agencies in Washington state. The department completed a random sample mailing to twenty-eight percent of these agencies and received a twenty-seven percent response rate. Of the twenty-seven percent who responded, forty-eight percent met the definition of "small business" within the meaning of RCW 19.85.011.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" (see RCW 34.05.328 (5)(c)(iii)), the department has determined the proposed rules to be "significant" as defined by the legislature. Nevertheless, because the content of these rules is explicitly and specifically dictated by statute, a[n] evaluation of the costs and benefits of these rules is not required pursuant to RCW 34.05.328 (5)(b)(v).

For informational purposes, the department has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs. The businesses impacted by these rules are adult family homes, boarding homes and home care agencies.

COST OF COMPLIANCE: To consider costs of compliance, the department considered costs of training long-term care workers prior to the implementation of Initiative 1029 and after the rule implementation related to Initiative 1029. This is because:

- Long-term care workers drive the businesses that provide direct care. In these businesses, there is a high turnover rate. This requires ongoing costs of training long-term care workers. Using the cost of training before and after implementation of Initiative 1029 is a more accurate depiction of costs than costs per employee;
- Business decisions and planning are based on the number of long-term care workers needed to meet the needs of the clients served; and,
- The increase of hours in required training for long-term care workers influences the most significant proposed changes in cost.

Cost of Long-Term Care Training: The major cost anticipated by small businesses for proposed rule changes is the new requirement that increases long-term care training from its current thirty-two hours to seventy-five hours. This requirement has been added to improve training for long-term care workers and improve client outcomes since decisions about quality patient care will be based on outcomes derived from this training.

Currently, training of long-term care workers occurs within a one hundred twenty day period of time after initial

hire. As of January 2011, all new long-term care workers must complete seventy-five hours of training within the one hundred twenty days and complete a certification examination administered by the department of health within one hundred fifty days of hire. This becomes the baseline requirement.

Additionally, there is minor cost anticipated by small business for proposed rule changes that increase continuing education from ten hours per calendar year, to twelve hours per calendar year.

The small business owners determine the ways to meet these requirements for training. There are currently several ways in which training of long-term care workers can be accomplished. Providers have the following options:

- In-house instruction by instructors that have met DSHS instructor qualifications and have been approved by DSHS to teach the training.
- Utilizing a DSHS approved community educator (fee based).
- Utilizing a DSHS approved community college (fee based).
- Training partnership (after January 1, 2011, this will be fee based).

Currently, forty-five percent of these small businesses provide in-house instruction and will reportedly continue to do so in the future. The remaining sixty percent pay for training through various venues and plan to continue to do so in the future. The cost of providing for the increase in training hours will reportedly increase for seventy-seven percent of respondents. Of these respondents, fifty-seven percent anticipate an increase in costs from the current cost of less than \$500.00 per employee per year, to a projected range of \$501.00 to \$2500.00 per employee per year.

In addition, forty-eight percent of respondents report that this will affect their ability to provide services, while twenty-six percent are unsure of the impact of the costs on services. Lastly, forty-five percent of respondents report that the changes in these rules will result in job loss, while fifty-three percent question whether they will be able to continue their businesses.

BENEFITS: There are benefits to the changes in these rules: Programmatic, long-term care worker training, and client care. The major benefits are listed below:

- Ensure that long-term care workers receive additional and enhanced training that will prepare them for work with diverse clients.
- Ensure that long-term care workers are well trained and prepared for work across diverse care settings.
- Provide in-depth coverage of key content that will enhance quality of care.
- Provide on-the-job support and career development services for workers across the spectrum of long-term care.
- Provide oversight and consistency in continuing education for long-term care workers.

DISPROPORTIONATE ECONOMIC IMPACT ANALYSIS:

When there are more than minor costs to small businesses as a result of proposed rule changes, the Regulatory Fairness Act requires an analysis to be done comparing these expenses between small businesses and ten percent of the largest businesses. The costs identified with the increase in training requirements for long-term care workers for small businesses would be considered by the department to be "more than minor." Small businesses have expressed the most concern over this added requirement of all the other proposed rule changes submitted.

The department looked at the possible disproportionate impact of this requirement on small businesses, as compared to ten percent of the largest businesses. Given cost information the department compiled on both small and large business[es], the department determined that there is a disproportionate impact on small businesses.

The department recognizes that the cost of additional training will impact all agencies and entities that employ long-term care workers.

MITIGATING EXPENSES FOR LONG-TERM CARE WORKER TRAINING: The department has proposed plans to mitigate expenses for small businesses. The department will use one or more of the following to help small businesses meet the requirement for increased training of long-term care workers:

- The department will develop policies and procedures that more formally enable small businesses and training entities to authorize on-the-job training as a component of the seventy-five hour long-term care worker basic training. This minimizes the number of hours that long-term care workers will have to be trained outside of the agency and will lessen worker replacement costs.
- The department will provide curriculum materials for use by small businesses at cost for copying.
- The department will engage in instructor development through routine regional trainings and provide train the trainer programs to assist small businesses in meeting the instructor requirements enabling them to conduct their own training.
- The department will be available for consultation and technical assistance as small businesses identify creative approaches for implementing the training requirements.

CONCLUSION: The department has given careful consideration to the impact on small businesses of proposed rules in chapters 388-12 and 388-71 WAC, training requirements for long-term care workers. The department has analyzed impacts on small businesses and proposed ways to mitigate those costs associated with this legislatively mandated increase in training requirements.

Qualitative Responses to Survey

*Responses were taken directly from the surveys and were not edited for grammar and spelling.

Question	Responding Businesses
<p>How much do you anticipate the annual cost per employee will be to meet the seventy-five hour training requirement of Initiative 1029?</p>	<ul style="list-style-type: none"> • <i>Adult family homes</i> • <i>Boarding homes</i> • <i>Home care agencies</i>
	<p><i>75 hr. training will require using replacement caregivers who will not be as experienced with our particular residents' needs and the general function of our facility. This is going to be a horrible impact financially on a small business! 43 additional hours of training per caregiver.</i></p> <p><i>We pay for the training for the hours spent in training, for on-call caregiver while training, and for travel.</i></p> <p><i>Will have to pay staff to attend classes also pay for the classes while paying staff on duty that may be overtime to cover shifts.</i></p> <p><i>This initiative will put us out of business unless there is additional funding to help meet the 75 hrs. of training required. This level of training means that in addition to the training, we will need to provide the regularly scheduled coverage. This will lead to more overtime. We are already barely able to get by each month.</i></p> <p><i>This will increase the financial hardships we are already experiencing.</i></p> <p><i>Since the employees in this industry are turning over so often, the owners of the adult family home have to pay the education fees over and over again each year. Some employees paid their own tuitions before they are hired, but they ask higher salary. So the costs of education have been transferred to the owners of the adult family home.</i></p> <p><i>The cost varies depending on how many are employed. Also where we/they get their education.</i></p> <p><i>This would be very expensive considering that the Departments pays providers peanuts to take care of this clients and we could barely afford to raise this kind of money.</i></p> <p><i>The cost to pay for training, hours to attend training and time for extra staff is very burdensome and costly.</i></p> <p><i>Having to hire additional help while I and caregivers take classes and paying for classes probably from a outside agency at \$25 an hour — This is just stupid as 1029 only passed due to the wording "no background checks thru FBI".</i></p> <p><i>I will have to have people fill-in and work extra hours for a longer period of time. As we are a small facility and cannot afford extra staff to fill-in, there will be a considerable amount of over-time for the staff on hand.</i></p> <p><i>Cost will depend on the scope of Department interpretation of RCW. \$40,000+. At a minimum, the cost would include paying the employee for the training. 84 hours cot per employee would be \$925. Assuming we have 50 people a year (which we did in 2009) the cost to train new employees would be \$925x50=\$46,250. This does not include cost of trainer.</i></p> <p><i>Not only would if effect my hourly rate charged to the client/ a minimum of \$1/hr increase it would limit my choice of employees. Many of my employees who love the work as part-time would be discouraged by being required to complete 72 hours of training before they can work. I have found my best employees are not interested in caregiving as a career, but do it because it's in their heart.</i></p>
<p>Do you anticipate that these changes will affect your ability to provide services?</p>	<ul style="list-style-type: none"> • <i>Adult family homes</i> • <i>Boarding homes</i> • <i>Home care agencies</i>

Question	Responding Businesses
	<p><i>As in most DD homes, we tend to have 1 to 2 residents hospitalized each year at a minimum re-imbursement for only a few weeks. This creates a huge financial burden as we still have to double staff with 5 residents left in the home. Problem is that with a low census, we make zero profit. And now we're being asked to pay for additional training, while trying to keep the staff we have employed. It is complex, yet simple: We will cease to be in business, which would be a huge domino effect for our staff and residents.</i></p> <p><i>This new requirement will likely eliminate a lot of prospective hires who would be perfectly acceptable as caregivers in adult family homes.</i></p> <p><i>It will be difficult to find entry level caregivers willing to train 75 hours without knowing whether or not the position is right for them. Employers will think twice before hiring someone with no experience. Shortages of qualified caregivers will affect services.</i></p> <p><i>If not cost effective and I cannot teach requirements, may not be able to educate. May not have a business to run!</i></p> <p><i>Staff may be required to work overtime to cover shift causing fatigue. May go out of business the wages will be higher than income.</i></p> <p><i>The more requirements, the more difficult to find a qualified caregiver, the more expensive to run the business, the more the owners have to do by themselves, the more difficult to provide a quality service to the clients. Fingerprinting makes the least sense in this requirement list. Given hospitals don't require the fingerprinting for the professional staff.</i></p> <p><i>Because it is hard to find a stable helper — caregiver — the cost will be too high because we need to train so many hours.</i></p> <p><i>Could break the bank — especially with awful DSHS reimbursement.</i></p> <p><i>We run a respectful AFH and only accept residents who are low to no-income so cost is a major factor in running our home. We believe the changes will increase the cost availability of instructors, times, dates, location and accessibility of classes; these are just a few of the obstacles we foresee in hiring 2 new employees. All of that can lead to a delay in bringing new staff members on which can lead to overworked staff and possibly affecting services.</i></p> <p><i>With higher cost to training, this will take away from bottom line. This will send people out of state! These rules are ridiculous!</i></p> <p><i>We anticipate that there will be a shortage of employees willing to take the extra training. These potential employees will leave the field entirely.</i></p> <p><i>It will be harder for us to get educated employees. This could destroy the CAN/Caregiver industry! With all the cost increases, it will be passed on to the residents. The good CNA/RNA will remain good with or without more training. the NOT so good CNA/RNA will remain NOT so good WITH OR WITHOUT more training. Because caregivers now are complaining how much training they had and they want the employer to pay for training expenses. With less of payment from DSHS resident, I can't afford to pay for this training.</i></p> <p><i>We are a small home with little staff. The overtime and cost to pay people to attend training is already extremely difficult financially.</i></p> <p><i>Probably — Educators will increase costs; turnover in this field is high, thus continuous training costs; scant GOOD employees. Those with higher education will NOT do job. Catch 22!</i></p> <p><i>Initiative 1029 will critically limit the pool of potential staff. People cannot afford to pay for their own training at this price and care facilities can't afford to do it with such high staff turnover rates. I-1029 was/is a HORRIBLE idea and we are considering closing our facilities because of it.</i></p>

Question	Responding Businesses
	<p><i>I provide training as a benefit to my employees. Obviously this will be a heavy burden to my business. Because I'm unable to provide a prevailing wage, I have staff turnover of 2-3 employees per year, although I make an effort to be a worker friendly work environment and do maintain my staff for 2-3 yrs. It will be a discouragement to untrained potential employees to have to get 75 hrs of training for a minimum wage job.</i></p> <p><i>More education may lead to higher demand for higher wages. Also, may force employer to pay for education. Small employers have not be able to stay competitive.</i></p> <p><i>We will probably have to increase rates to compensate or we will only hire caregivers who already meet the requirements which will limit our availability.</i></p> <p><i>I will have to hire fewer part-time workers to help control my cost and prevent passing that cost on to the client. Instead I will be forced to hire full-time employees who may not be the best suited for the job.</i></p>
Do you anticipate an estimated job loss or creation because of these changes?	<ul style="list-style-type: none"> • Adult family homes • Boarding homes • Home care agencies
	<p><i>Job loss because we will not be able to afford to pay all of the State's cut back (thick-it, Ensure, wipes, attends) as well as additional training cost to staff. What the legislatures do not understand is that if a staff is already "wired" to be abusive, all the training in the world is NOT going to change that. There will always be "bad apples" in the field, my job as an employer is to be involved in my company, and to training my staff properly, as well as to reiterate that each of us are "mandated reporters"!</i></p> <p><i>Additional cost and strain on our function adds an additional layer of stress to a difficult job. Additional interventions from government and union are very discouraging. May consider (WILL consider) moving to a business friendlier state. If there is no increase in residents'/clients rates, then most AFH providers can no longer afford to employ any workers and therefore loss of jobs.</i></p> <p><i>They have to leave current work place if they cannot afford to take classes.</i></p> <p><i>We will not be able to pay employees.</i></p> <p><i>Unless the staff were willing/able to complete the training requirements at a reduced pay rate, there is no way we can afford this initiative. All eleven employees will be out of work.</i></p> <p><i>If the cost is too high, employers will have to shut down and new employees will not join this field due to the cost of training to begin.</i></p> <p><i>Some lower educated employees may lose their jobs because of higher requirements. There are a lot of lower educated people working in this industry.</i></p> <p><i>The people who do take the extra training will expect a higher wage due to the extra training. There is only so much money to go around, any significant increase in average wages results in job loss.</i></p> <p><i>I will have to work more hours and have less employees in order to pay for increased training.</i></p> <p><i>Unable to meet expenditures and job loss time.</i></p> <p><i>I will retain employees, but may have less staff per shift.</i></p> <p><i>Job loss 100% will happen. No available funds to finance this training. Staff schedule disruption to accommodate for this required training. This required training do not have an actual based practice evidence that will justify improvement of caregiving services. It will most likely compromise care because there will be reduction of staff brought about by this additional expense.</i></p>

Question	Responding Businesses
	<p><i>I do utilize two caregivers during the day so residents are not rushed with bathing and AM care. I will reduce to one caregiver a day. I will cut back two positions. I have three AFHs. This survey was based on ONE only, so multiply the results x 3. More education may lead to higher demand for higher wages. Also, may force employer to pay for education. Small employers have not be able to stay competitive.</i></p> <p><i>I will have to hire fewer part-time workers to help control my cost and prevent passing that cost on to the client. Instead I will be forced to hire full-time employees who may not be the best suited for the job.</i></p> <p><i>If caregivers can't pay for the class themselves and we are unable to do so in-house, people won't be able to work.</i></p> <p><i>I will have to lay off those that are skilled at what they do but are not licensed.</i></p>

A copy of the statement may be obtained by contacting Kristi Knudsen, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3213, fax (360) 407-7582, e-mail Kristi.Knudsen@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kristi Knudsen, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3213, fax (360) 407-7582, e-mail Kristi.Knudsen@dshs.wa.gov.

April 30, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0500 What is the purpose of WAC 388-71-0500 through ((388-71-05952) [388-71-05994]) 388-71-0561 and 388-71-0836 through 388-71-1006? ((A client/legal representative may choose an individual provider or a home care agency provider.)) The ((intent)) purpose of WAC 388-71-0500 through ((388-71-05952) [388-71-05994]) 388-71-0561 and WAC 388-71-0836 through 388-71-1006 is to describe the:

(1) Qualifications of an individual provider, as defined in WAC 388-106-0010;

(2) Qualifications of a caregiver from a home care agency ((provider)), as defined in WAC 388-106-0010 and chapter 246-336 WAC;

(3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency ((provider)) caregiver;

(4) Training requirements for an individual provider and home care agency ((provider)) caregiver.

A participant, as described in WAC 388-71-0836 eligible to receive long-term care services, or his/her legal representative on the participant's behalf, may choose to receive personal care services in the participant's home from an individual provider or a caregiver from a home care agency. If the participant chooses to receive services from a home care agency, the agency will assign a caregiver employed by the agency to provide services to the participant. Individual providers and home care agency caregivers are "long-term care

workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW 74.39A.055 and 43.20.710.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0505 How does a ((client)) participant hire an individual provider? The ((client)) participant, or legal representative:

- (1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider;
- (2) Establishes an employer/employee relationship with the individual provider; and
- (3) May receive assistance from the social worker/case manager or other resources in this process.

AMENDATORY SECTION (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

WAC 388-71-0510 How does a person become an individual provider? In order to become an individual provider, a person must:

- (1) Be eighteen years of age or older;
- (2) Provide the social worker/case manager/designee with:
 - (a) A valid Washington state driver's license or other valid picture identification; and either
 - (b) A Social Security card; or
 - (c) Proof of authorization to work in the United States as required on the employment verification form.
- (3) ((Complete and submit to the social worker/case manager/designee)) Prior to January 1, 2012, be screened through the department's ((criminal conviction)) background ((inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW;)) check process:
 - (a) Preliminary results may require a thumb print for identification purposes;
 - (b) ((An FBI)) A fingerprint-based background check is required if:
 - (i) The person has lived in the state of Washington less than three consecutive years immediately before the date of the background check; or

(ii) The department has reasonable cause to believe the person has a conviction, pending charges, and/or negative actions in another state.

(4) Effective January 1, 2012, be screened through the department's fingerprint-based background check, as required by RCW 74.39A.055. As provided in RCW 43.20A.710, results of the background check are provided to the department and employer for the purpose of determining:

(a) Whether the person is disqualified based on a disqualifying crime or negative action; or

(b) Whether the person should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.

(c) Disqualifying crimes and negative actions are those listed in WAC 388-71-0540 (4), (5), and (6).

(5) Sign a home and community-based service provider contract/agreement to provide services to a COPES, MNIW, PACE, WMIP, or medicaid personal care ((client)) participant, or sign a contract as an individual provider to provide services to a New Freedom waiver, WMIP, or PACE participant under chapter 388-106 WAC.

NEW SECTION

WAC 388-71-0512 What is included in the department's fingerprint-based background check? The department's fingerprint-based background check includes a check of:

(1) Records contained in databases maintained by the Washington state patrol and the Federal Bureau of Investigation, including records of:

(a) Pending charges; and

(b) criminal conviction.

(2) Records maintained:

(a) In the national sex offenders registry;

(b) By the Washington state department of corrections;

(c) By Washington courts; and

(d) In the justice information system.

(3) Records of negative actions, final findings, or civil adjudication proceedings of any agency or subagency including, but not limited to:

(a) DSHS adult protective services;

(b) DSHS residential care services;

(c) DSHS children's protective services;

(d) The Washington state department of health;

(e) The nursing assistant registry; and

(f) Any pending charge, criminal conviction, civil adjudicative proceeding and/or negative action disclosed by the applicant.

(4) Any "civil adjudication proceeding", which is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds any agency finding of, domestic violence, abuse, sexual abuse, exploitation, financial exploitation, neglect, abandonment, violation of a child or vulnerable adult under any provision of law, including but not limited to chapters 13.34, 26.44, or 74.34 RCW or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to

timely exercise a legal right to administratively challenge such findings.

(5) Negative actions which include the denial, suspension, revocation, or termination of a license, certification, or contract for the care of children, as defined in RCW 26.44.-020, or vulnerable adults, as defined in RCW 74.34.-020, for noncompliance with any state or federal regulation.

(6) Except as prohibited by federal law, results are shared with the employer or prospective employer and with the department of health as authorized.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0513 Is a background check required of a caregiver from a home care agency ((provider))? In order to be a caregiver from a home care agency ((provider)), a person must ((complete)):

(1) Prior to January 1, 2012, be screened through the department's ((criminal conviction)) background ((inquiry application, which is submitted by the agency to the department. This includes an FBI fingerprint-based background check if the home care agency provider has lived in the state of Washington less than three years)) check process:

(a) Preliminary results may require a thumb print for identification purposes; and

(b) A fingerprint-based background check is required if the home care agency caregiver has lived in the state of Washington for less than three consecutive years immediately before the date of the background check.

(2) Effective January 1, 2012, be screened through the department's fingerprint-based background check, as required by RCW 74.39A.055. As provided by RCW 43.20A.710, results are provided to the department and home care agency for the purpose of determining:

(a) Whether the person is disqualified from being a home care agency caregiver based on a disqualifying crime, civil adjudication proceeding, or negative action as defined under WAC 388-71-0512; and

(b) Whether the person should or should not be employed as a home care agency caregiver based on his or her character, competence, and/or suitability. Except as prohibited by federal law, results are shared with the employer or prospective employer and the department of health for purposes of making this determination.

(3) Disqualifying crimes, civil adjudicative proceedings, and negative actions are listed in WAC 388-71-0540.

NEW SECTION

WAC 388-71-0514 Can an individual provider or home care agency caregiver work pending the outcome of the fingerprint-based background check? Yes, an individual provider or home care agency caregiver may work up to one hundred twenty days pending the outcome of the fingerprint-based background check provided that the person is not disqualified as a result of the department's background check.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

WAC 388-71-0515 What are the responsibilities of an individual provider or home care agency ((provider)) caregiver when ((employed to provide)) providing care to a ((client)) participant? An individual provider or home care agency ((provider)) caregiver must:

(1) Understand the ((client's)) participant's plan of care that is signed by the ((client)) participant or legal representative ((and social worker/case manager)), and which may be translated or interpreted, as necessary, for the ((client)) participant and the provider;

(2) Provide the services as outlined on the ((client's)) participant's plan of care, as ((defined)) described in WAC 388-106-0010;

(3) Accommodate ((client's)) the participant's individual preferences and ((differences)) unique needs in providing care;

(4) Contact the ((client's)) participant's representative and case manager when there are changes ((which)) that affect the personal care and other tasks listed on the plan of care;

(5) Observe ((the client for)) and consult with the participant or representative, regarding change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the ((client)) participant enters a hospital, or moves to another setting;

(7) Notify the case manager immediately ((if)) in the event of the ((client dies)) participant's death;

(8) Notify the department or AAA immediately when unable to staff/serve the ((client)) participant; and

(9) Notify the department/AAA when the individual provider or home care agency will no longer provide services. ((Notification to the client/legal guardian)) The individual provider or agency must:

(a) Give at least two weeks' notice, and

(b) ((Be)) Notify the participant or legal guardian in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

(12) A home care agency ((must not bill the department for in-home medicaid funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership)) caregiver may meet his or her responsibilities under subsections (5), (6), (7) and (8) by notifying an appropriate individual within the home care agency, who shall be responsible for consulting with the participant or representative or notifying the case manager, AAA, or the department, as required.

NEW SECTION

WAC 388-71-0517 What are the responsibilities of a home care agency when the home care agency caregiver is

a family member of the participant and the participant is receiving in-home medicaid-funded personal care or DDD respite services? A home care agency must not bill the department for in-home medicaid-funded personal care or DDD respite services when the agency employee providing care is a family member of the participant served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 09-03-066, filed 1/14/09, effective 2/14/09)

WAC 388-71-0520 ((Are there)) What are the training requirements for an individual provider or a home care agency ((provider of an adult client)) caregiver? An individual provider or a home care agency ((provider for an adult client)) caregiver must meet the training requirements ((in)) under WAC ((388-71-05665)) 388-71-0836 through ((388-71-05865 and WAC 388-71-0801 through 388-71-0826)) 388-71-1006.

AMENDATORY SECTION (Amending WSR 10-06-112, filed 3/3/10, effective 4/3/10)

WAC 388-71-0540 When will the department, AAA, or department designee deny payment for services of an individual provider or home care agency ((provider)) caregiver? The department, AAA, or department designee will deny payment for the services of a home care agency ((provider if)) caregiver:

(1) When the services are provided by ((an employee of the)) a home care agency ((who is)) employee that is a family member, as described under RCW 74.39A.326, of the participant, including individuals related by blood, marriage, adoption, or registered domestic partnership to the ((client)).

The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency provider who:

((4))) participant, except in circumstances described in RCW 74.39A.326 (1)(b);

(2) Who is the ((client's)) participant's spouse((, per)) in accordance with 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a ((continuing general assistance)) disability lifeline grant, per WAC 388-478-0030;

((2))) (3) Who is the natural/step/adoptive parent of a minor ((client)) participant aged seventeen or younger receiving services under medicaid personal care;

((3))) (4) Who is a foster parent providing personal care to a child residing in ((their)) the foster parent's licensed foster home;

((4)) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;))

(5) With any of the pending or disqualifying convictions, history, or findings, described below:

(a) A history of noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) A conviction for a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (5)(c) through (g) of this section;

(c) A conviction for a "crime against children or other persons" as described under RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) A conviction for "crimes related to financial exploitation" as described under RCW 43.43.830, unless the crime is theft in the third degree and more than three years have passed since conviction, or unless the crime was forgery or theft in the second degree and more than five years have passed since conviction;

(e) Has been convicted of:

(i) Violation of the imitation controlled substances act (VISCA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA); or

(iv) Violation of the uniform precursor drug act (VUPDA).

(f) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, abandoned, or financially exploited a minor or vulnerable adult by court of law or a disciplining authority, ((as defined in)) including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

(i) Has a finding of abuse or neglect of a child, per RCW 26.44.020 and chapter 388-15 WAC that is:

(A) Listed on the department's background check central unit (BCCU) report; or

(B) Disclosed by the individual, except for findings made before December, 1998. Findings made before December, 1998, require a character, competence and suitability determination.

(j) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003. Findings made before October, 2003, require a character, competence, and suitability determination.

(6) Has had a ((license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations)) medicaid or medicare provider agree-

ment or any other contract for the care and treatment of children or vulnerable adults terminated, cancelled, suspended, revoked, or not renewed by any public agency, including a state medicaid agency;

(7) Who does not successfully complete the training requirements, if exempt from certification, within the time limits required in WAC ((388-71-05665)) 388-71-0836 through ((388-71-05865)) 388-71-1006;

(8) ((Is already meeting)) Who does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975;

(9) Who has had a home care aide certification denied, suspended, or revoked and is not eligible to work until his or her certification has been reissued;

(10) When the ((client's)) participant's needs are already being met on an informal basis, and the ((client's)) participant's assessment or reassessment does not identify any unmet need; and/or

((9)) (11) Who is terminated by the ((client)) participant (in the case of an individual provider) or by the home care agency (in the case of ((an)) a home care agency ((provider)) caregiver).

(12) In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551((, and 388-71-0556)).

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-71-0543 When may the department, AAA, or department designee deny payment for the services of an individual provider or home care agency caregiver?

The department, AAA, or department designee may deny payment for the services of an individual provider or home care agency caregiver:

(1) Who has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(b) Forgery or theft in the second degree and more than five years has passed since conviction;

(c) Any conviction that the department determines is reasonably related to the competency of the person to provide care to a participant; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use of drugs, or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a denial of payment under this chapter;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed;

(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a caregiver who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a caregiver who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;

(8) Has been enjoined from operating a facility for the care and services of children or adults;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

(12) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview participants or have access to their records.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0546 When can the department, AAA, or ((managed care entity)) department designee reject ((the client's)) your choice of an individual provider? The department, AAA, or ((managed care entity)) department designee may reject ((a client's)) your request to have a family member or other person serve as ((his or her)) your individual provider if the case manager has a reasonable, good faith belief that the person is or will be unable to appropriately meet ((the client's)) your needs. Examples of circumstances indicating an inability to meet ((the client's)) your needs ((could)) include, ((without limitation)) but are not limited to:

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence committed by the individual provider, no-contact orders entered against the individual provider, or criminal conduct committed by the individual provider (whether or not the conduct is disqualifying under ((RCW 43.43.830 and 43.43.842)) WAC 388-71-0540);

(3) A report from ((the client's health care provider or other)) any knowledgeable person that the ((requested)) individual provider lacks the ability or willingness to provide adequate care;

(4) The individual provider has other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical for the individual provider to provide services as they are needed and outlined in ((the client's)) your service plan.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-71-0551 When can the department, AAA, or ((managed care entity)) department designee terminate or summarily suspend an individual provider's contract? The department, AAA, or ((managed care entity)) department designee may take action to terminate an individual provider's home and community-based service provider contract/agreement to provide services to a COPES, MNIW, or medicaid personal care participant, or terminate a contract to an individual provider to provide services to a New Freedom waiver, WMIP, or PACE participant under chapter 388-106 WAC if the provider's:

(1) Home care aide certification has been revoked; or

(2) Inadequate performance or inability to deliver quality care is jeopardizing the ((client's)) participant's health, safety, or well-being.

(3) The department, AAA, or ((managed care entity)) department designee may summarily suspend the contract pending a hearing based on a reasonable, good faith belief that the ((client's)) participant's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the ((client could)) participant include, ((without limitation)) but are not limited to:

((1)) (a) The individual provider has committed domestic violence or abuse, neglect, abandonment, or exploitation of a ((minor)) child, as defined in RCW 26.44.020 or a vulnerable adult, as defined in RCW 74.34.020;

((2) Using or being)) (b) The individual provider uses or is under the influence of alcohol or illegal drugs during working hours;

((3)) (c) The individual provider engages in other behavior directed toward the ((client)) participant or other persons involved in the ((client's)) participant's life that places the client at risk of harm;

((4)) (d) A report from the ((client's)) participant's health care provider that the ((client)) participant's health is negatively affected by inadequate care being provided by the individual provider;

((5)) (e) A complaint from the ((client or client's)) participant or participant's representative that the ((client)) participant is not receiving adequate care from the individual provider;

((6)) (f) The ((absence of)) individual provider's failure to engage in essential interventions identified in the service plan, such as medications or medical supplies; and/or

((7)) (g) The individual provider's failure to respond appropriately to emergencies.

AMENDATORY SECTION (Amending WSR 01-11-019, filed 5/4/01, effective 6/4/01)

WAC 388-71-0560 What are the ((client's)) participant's rights if the department denies, terminates, or summarily suspends an individual provider's contract? (1) If the department denies, terminates, or summarily suspends the individual provider's contract, the ((client)) participant has the right to:

((1)) (a) An administrative hearing to appeal the decision, ((per)) under chapter 388-02 WAC, and

((2)) (b) Receive services from another currently contracted individual provider or home care agency ((provider)) caregiver, or ((other options)) to receive services through other programs the ((client)) participant is eligible for, if a contract is summarily suspended.

((3)) (2) The hearing rights ((afforded)) provided under this section are those of the ((client)) participant, not the individual provider's rights.

NEW SECTION

WAC 388-71-0561 When does an individual provider have administrative hearing rights? (1) An individual provider has administrative hearing rights when the department denies payment to the individual provider:

(a) Who has not been certified by the department of health as a home care aide; or

(b) If exempted from certification, has not completed required training within the required timeframe.

(2) An individual provider has an administrative hearing right when the department terminates the individual provider's contract, or takes other enforcement measures:

(a) When the individual provider's certification as a home care aide has been revoked by the department of health; or

(b) If exempted from certification, has not completed training requirements within the required timeframe.

(3) In an administrative hearing challenging DSHS action to deny payment to an individual provider or to terminate the contract of an individual provider, the individual provider may not challenge the action by the department of health affecting the individual provider's certification. Action by the department of health affecting the individual provider's certification must be challenged in a department of health hearing, as provided in department of health rules.

NEW SECTION

WAC 388-71-0836 What definitions apply to the long term care worker training requirements? "Care team" includes the participant and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, caregivers, social workers and case managers. The role of the care team is to support the well-being of the participant, however, the participant directs the care plan.

"Certified home care aide" means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

"Competency" defines the integrated knowledge, skills, or behavior expected of a long-term care worker after

completing training in a required topic area. Learning objectives are associated with each competency.

"DDD" refers to the division of developmental disabilities.

"Department" or **"DSHS"** refers to the department of social and health services.

"Hands-on care" means providing personal care services.

"Individual provider" means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under medicaid personal care, community options program entry system (COPES), chore services, or respite care program, or to provide respite care or residential services and supports to person with developmental disabilities under chapter 71A.12 RCW or to provide respite care as defined in RCW 74.13.270.

"Learning objectives" are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

"Long-term care worker" includes all persons providing personal care for the elderly or persons with disabilities, including individual providers, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, and adult family homes, respite care providers, and supported living providers.

Long-term care workers do not include persons providing personal care services in nursing homes subject to chapter 18.51 RCW; hospitals or other acute care settings; residential habilitation centers under chapter 71A.20 RCW; facilities certified under 42 CFR, Part 483; hospice agencies subject to chapter 70.127 RCW; adult day centers; adult day health centers; persons who are otherwise licensed to provide health care services, such as nurses and certified nursing assistants; and individuals providing personal care on an independent basis to private-pay consumers. This last instance would occur when personal care services are provided directly to an individual who pays for the services out-of-pocket without assistance from DSHS.

"Participant" means the individual receiving in-home services.

"Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living, as defined in WAC 388-106-0010, provided because of a person's functional limitations.

"Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

ORIENTATION AND SAFETY TRAINING

NEW SECTION

WAC 388-71-0841 What is orientation? (1) Orientation is a training of two hours that provides basic introductory information appropriate to the in-home setting and population served.

(2) Orientation must be provided by a qualified instructor of:

- (a) The training partnership for individual providers; or
- (b) Appropriate agency staff for home care agency caregivers.
- (3) The department must pre-approve orientation curriculum.

NEW SECTION

WAC 388-71-0846 What content must be included in orientation? Orientation must include introductory information in the following areas:

(1) The care setting and the characteristics and special needs of the population served;

(2) Basic job responsibilities and performance expectations;

- (3) The care plan, including what it is and how to use it;
- (4) The care team;

(5) Process, policies, and procedures for observation, documentation and reporting problems and concerns;

(6) Participant rights protected by law, including the right to confidentiality and the right to participate in care decisions or to refuse care;

(7) Mandatory reporter law and worker responsibilities; and

(8) Communication methods and techniques that can be used during the first weeks working with a participant or guardian, other care team members, and a participant's family and/or friends.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The instructor must establish a way for the student to ask the instructor questions.

NEW SECTION

WAC 388-71-0850 What is safety training? (1) Safety training is a training of three hours which provides basic information to reduce the risk of or prevent injury, illness, and accidents in an in-home setting.

(2) Safety training must be provided by a qualified instructor of:

- (a) The training partnership for individual providers;
- (b) Appropriate agency staff for home care agency caregivers; or
- (c) Other DSHS contracted community instructors or training entities.
- (3) The department must approve safety training curriculums.

NEW SECTION

WAC 388-71-0855 What content must be included in safety training? Safety training consists of introductory information in the following areas:

(1) Safety planning and accident prevention, including but not limited to:

- (a) Proper body mechanics;
- (b) Fall prevention;
- (c) Fire safety;
- (d) In-home hazards;
- (e) Long-term care worker safety; and
- (f) Emergency and disaster preparedness.

(2) Standard precautions and infection control, including but not limited to:

- (a) Proper hand washing;
- (b) When to wear gloves and how to correctly put them on and take them off;
- (c) Basic methods to stop the spread of infection;
- (d) Protection from exposure to blood and other body fluids;
- (e) Appropriate disposal of contaminated/hazardous articles;

(f) Reporting exposure to contaminated articles; and

(g) What to do when sick or injured, including whom to report this to.

(3) Basic emergency procedures, including but not limited to:

- (a) Evacuation preparedness;
- (b) When and where to call for help in an emergency;
- (c) What to do when a participant is falling or falls;
- (d) Location of any advanced directives and when they are given; and
- (e) Basic fire emergency procedures.

One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training. The instructor must establish a way for the student to ask the instructor questions.

NEW SECTION

WAC 388-71-0860 Who must complete orientation and safety training and by when? Unless exempted in WAC 388-71-0901, or the long-term care worker is a parent provider as described in WAC 388-71-0890, all long-term care workers must complete orientation and safety training prior to providing care to a participant.

BASIC TRAINING

NEW SECTION

WAC 388-71-0870 What is basic training? (1) Basic training is seventy hours of training that includes:

- (a) Core competencies; and
- (b) Population specific competencies.

(2) All basic training curriculum and instructors must be pre-approved by DSHS.

(3) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

NEW SECTION

WAC 388-71-0875 Who must complete basic training and by when? Unless exempt from training in WAC 388-71-0901, all long-term care workers must complete core and population specific competencies within one hundred twenty days of:

(1) The date of hire for home care agency caregivers; or

(2) From the begin date of the authorization to provide department-paid in-home services for a participant for individual providers.

NEW SECTION

WAC 388-71-0880 Who must take the thirty hour training instead of the seventy hour basic training and when must it be completed? The thirty hour basic training, as described in WAC 388-71-0885, must be completed within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services by:

(1) An individual provider caring only for his or her biological, step, or adoptive child or parent; and

(2) Until January 1, 2014, an individual provider who provides care to only one person for twenty hours or less in any calendar month.

The individual providers described in this section may choose to complete the seventy hour basic training at their own expense.

NEW SECTION**WAC 388-71-0885 What is the thirty hour training?**

The thirty hour training is a subset of the seventy hour basic training that must include core and population specific basic training. Topics completed in the subset must be on topics relevant to the care needs of participant(s) and the care setting.

NEW SECTION

WAC 388-71-0890 What are the training requirements for parents who are individual providers for their adult children through DDD? A natural, step, or adoptive parent who is the individual provider for his or her adult child receiving services through the DSHS division of developmental disabilities must complete the twelve hour DDD parent provider training, as described in WAC 388-71-0895, within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services.

NEW SECTION

WAC 388-71-0895 What is the twelve hour developmental disabilities (DD) parent provider training? The twelve hour DD parent provider training must include the following topics:

(1) Medicaid personal care;

(2) Assessments completed by the division of developmental disabilities;

(3) Community resources;

- (4) State and federal benefits; and
- (5) Networking.

NEW SECTION

WAC 388-71-0901 What long-term care workers are exempt from the orientation, safety training and basic training requirement? (1) A person employed as a long-term care worker on December 31, 2010, who completed prior to January 1, 2011, all of the training requirements in effect on the date of his or her hire;

(2) A person employed as a long-term care worker on December 31, 2010, who completes within one hundred twenty days of hire, all of the training requirements in effect on the date of his or her hire;

(3) A person previously employed as a long-term care worker prior to December 31, 2010, who completed prior to January 1, 2011, all the training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point during the calendar year 2010;

(4) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

(5) Nursing assistants-certified under chapter 18.88A RCW;

(6) Certified counselors under chapter 18.19 RCW;

(7) Speech language pathologists or audiologists under chapter 18.35 RCW;

(8) Occupational therapists under chapter 18.59 RCW;

(9) Physical therapists under chapter 18.74 RCW;

(10) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35;

(11) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010;

(12) Parent providers as described in WAC 388-71-0890; and

(13) Until January 1, 2014, an individual provider who provides care to only one person for twenty hours or less in any calendar month.

A long term-care worker exempted by this section from the training requirements contained in RCW 74.39A.073 may not be prohibited from enrolling in the training and attending at their own expense.

NEW SECTION

WAC 388-71-0906 What topics must be taught in the core competencies of basic training? Basic training must include all of the competencies under WAC 388-71-0911 for the following topics:

(1) Communication skills;

(2) Long-term care worker self-care;

(3) Problem solving;

(4) Participant rights and maintaining dignity;

(5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;

(6) Participant directed care;

(7) Cultural sensitivity;

(8) Body mechanics;

- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

NEW SECTION

WAC 388-71-0911 What are the core competencies and learning objectives for basic training? The core competencies describe the behavior and skills that a long-term care worker should exhibit when working with participants. Learning objectives are associated with each competency.

(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with participants, family members, and other care team members:

- (a) Recognize how verbal and nonverbal cues impact communication with the participant and care team;
- (b) Engage and respect the participant through verbal and nonverbal communication;
- (c) Listen attentively and ensure that the participant understands what has been communicated;
- (d) Recognize and acknowledge participants' communication for indicators of pain, confusion, or misunderstanding;
- (e) Utilize communication strategies to deal with difficult situations; and
- (f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

- (a) Identify behaviors, practices and resources to reduce stress and avoid burnout;
- (b) Recognize common barriers to self-care and ways to overcome them; and
- (c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

- (a) Explain why it is necessary to understand and utilize a problem solving method;
- (b) Implement a problem solving process/method; and
- (c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of participant rights and dignity, take appropriate action to promote and protect a participant's legal and human rights:

- (a) Identify participant rights that are protected by federal and Washington state laws;
- (b) Protect a participant's confidentiality;
- (c) Promote dignity, privacy, and encourage a participant's maximum independence when providing care; and
- (d) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.040; and

(b) Identify common signs and symptoms of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of participant directed care, encourage the participant to direct his or her care:

(a) Explain the importance of participant directed care;

(b) Use problem solving skills that balance a participant's choice with safety; and

(c) Report concerns when a participant refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care; and

(b) Utilize methods to determine and ensure a participant's beliefs are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for a participant; and

(b) Take proper steps to assist when a participant is falling or has fallen and is on the floor.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a participant's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what to do if a participant develops a pressure ulcer;

(e) Identify when to report skin concerns and to whom;

(f) Describe personal care practices to protect and maintain a participant's skin integrity including how often a participant must change position when sitting or lying for extended periods, proper positioning and transfers; and

(g) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, where, how, and why to obtain information about a participant's condition or disease for which they are receiving services and use this information to provide appropriate, individualized care;

(b) Describe a participant's baseline based on information provided in the care plan and explain why it is important to know a participant's baseline;

(c) Identify changes in a participant's physical, mental, and emotional state;

(d) Report changes from baseline and/or concerns to the appropriate care team member;

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to a participant's safety and well-being;

(f) Explain the purpose of a care plan and describe how it is created and modified;

(g) Use a participant's care plan to direct a worker's job tasks and any participant directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for the following personal care tasks:

(i) Helping an individual walk;

(ii) Transferring an individual from bed to wheelchair;

(iii) Turning and repositioning an individual in bed;

(iv) Providing mouth care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting an individual with a weak arm to dress;

(xi) Putting knee-high elastic stockings on an individual;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting an individual to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate participant preferences, maintain privacy and dignity, encourage independence, and assure comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a participant's bowel and bladder functioning baseline and when to report concerns.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a participant's health;

(b) Plan, shop, and prepare meals for a participant according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the care plan and participant preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a participant;

(e) Recognize when a participant's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves and utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described under in chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with a participant who refuses to take medications, identifying when and to whom to report when a participant refuses medication or there are other medication-related concerns, and identifying what is considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control, blood borne pathogens and HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify common infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that any adult needs to reduce the spread of viruses and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what blood-borne (BB) pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for participants and long-term care workers.

Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the participant in the grieving process:

(a) Define grief and loss;

(b) Describe common losses a participant or long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss.

NEW SECTION

WAC 388-71-0916 What topics must be taught in the population specific competencies of basic training? Population specific training must include all of the competencies under WAC 388-71-0921 for the following topics:

- (1) Dementia;
- (2) Mental health;
- (3) Developmental disabilities;
- (4) Young adults with physical disabilities;
- (5) Aging and older adults;
- (6) Communication; and
- (7) Dealing with challenging behaviors.

NEW SECTION

WAC 388-71-0921 What are the population specific competencies? The population specific competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the population specific training. Learning objectives are associated with each competency.

(1) Regarding the competency on dementia, work effectively with participants who have dementia based upon a basic understanding of dementia:

(a) Identify basic information on dementia, including causes and treatments;

(b) Describe how dementia affects a person's needs and behaviors;

(c) List typical behaviors and symptoms a person with dementia would most likely experience; and

(d) Describe the differences the long-term care worker might see based on the type of dementia a person has.

(2) Regarding the competency on mental health, work effectively with participants with a mental disorder based upon a basic understanding of mental disorders:

(a) Define and describe main symptoms of major mood and thought disorders, including depression, bipolar disorder, schizophrenia, and anxiety disorder, and list possible treatment options;

(b) Describe the progression of mental disorders;

(c) Identify common myths and misinformation about mental disorders;

(d) Define stigma and identify how stigma can impact caregiving;

(e) Identify if, and list signs that, a person is possibly suicidal;

(f) Describe how to respond appropriately to a person experiencing suicidal thoughts, including how, where, and when to refer someone who is experiencing suicidal thoughts and/or planning, and methods to keep a suicidal person safe and ensure safety for others; and

(g) Describe strategies to help cope with a participant's suicide.

(3) Regarding the competency on developmental disabilities, work effectively with individuals who have a developmental disability based upon a basic understanding of developmental disabilities:

(a) Define developmental disability and describe the following conditions, including mental retardation, cerebral palsy, epilepsy, and autism;

- (b) Identify common myths and misconceptions about developmental disabilities;
- (c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and
- (d) Differentiate between developmental disabilities and mental disorders.

(4) Regarding the competency on young adults with physical disabilities, work effectively with young adults with physical disabilities based on a basic understanding of physical disabilities:

- (a) Identify basic information regarding physical disabilities, injuries and illnesses that are more common in younger adults;
- (b) Describe the impact of changing and fluctuating abilities;
- (c) Identify stereotypes, biases and misconceptions regarding perception of adults with disabilities;
- (d) Describe how biases, stereotypes and misconceptions can influence care to adults with disabilities;
- (e) Identify and explain the Americans with Disabilities Act and rights for adults with physical disabilities; and
- (f) Describe the value of personalizing care and supporting the specific person with a disability.

(5) Regarding the competency on aging and older adults, work effectively with older adults based on a basic understanding of aging:

- (a) Describe basic information on the aging process, including the difference between age-related changes and disease process;
- (b) List typical changes that occur with aging;
- (c) Identify common stereotypes, biases and misconceptions regarding aging, "ageism" and older adults;
- (d) Describe how "ageism", biases, myths and misconceptions can influence care to older participants;
- (e) Describe how aging affects the participant's needs and behaviors; and
- (f) Describe the value of adapting caregiving to the age-related concerns of the person.

(6) Regarding the competency on communication, communicate respectfully and appropriately with participants who have dementia, a mental disorder, or a developmental disability:

- (a) Explore and discuss how dementia-caused cognitive losses, mental disorders, and developmental disabilities affect communication;
- (b) Demonstrate appropriate and inappropriate communication skills;
- (c) Discuss how effective communication impacts a participant's behavior;
- (d) Demonstrate how to effectively initiate and conduct a conversation with a participant who has dementia; and
- (e) List tips for communicating with individuals with dementia, mental disorders, and developmental disabilities.

(7) Regarding the competency on dealing with challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

- (a) Identify some challenging behaviors and explore their causes;

- (b) Review and demonstrate the use of a problem-solving method to intervene in challenging behaviors or situations;

- (c) Describe strategies for dealing with challenging behaviors; and

- (d) Demonstrate how to respond appropriately to a participant who is expressing a challenging behavior.

Population specific training on dementia may be used to meet the introduction to dementia as described under WAC 388-112-0132(1); the population specific training on mental health may be used to meet the introduction to mental health as described under WAC 388-112-0142(1); the population specific training on developmental disabilities may be used to meet the introduction to developmental disabilities as described under WAC 388-112-0122(1).

NEW SECTION

WAC 388-71-0931 What other training may count towards the seventy hour basic training requirement? (1) Nurse delegation core training;

- (2) Nurse delegation specialized diabetes training; and

- (3) Peer mentoring and/or on-the-job training after July 1, 2011. Only up to twelve hours may be applied in any combination of peer mentoring or on-the-job training.

NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

NEW SECTION

WAC 388-71-0936 What is nurse delegation core training? (1) Nurse delegation core training is the required course a nursing assistant, certified or registered, must successfully complete before being delegated a nursing task.

(2) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants" meets the training requirement for nurse delegation core training.

(3) DSHS must approve the instructors for nurse delegation core training prior to an instructor offering a course.

NEW SECTION

WAC 388-71-0941 What is specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training is the required course for nursing assistants, certified or registered, who will be delegated the task of insulin injections.

(2) The specialized diabetes nurse delegation training consists of three modules which are diabetes, insulin, and injections.

(3) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes" may be used for the specialized diabetes nurse delegation training.

(4) DSHS approves the instructors for the specialized diabetes nurse delegation training prior to an instructor offering a course.

NEW SECTION

WAC 388-71-0946 Who is required to complete the nurse delegation core training, and when? Before performing any delegated task, a long-term care worker must:

(1) Be a:

(a) Certified home care aide and nursing assistant registered; or

(b) Nursing assistant certified under chapter 18.88A RCW; or

(c) If exempt from the home care aide certification, become a nursing assistant registered and complete the basic training core competencies.

(2) Successfully complete "Nurse Delegation for Nursing Assistants" training.

NEW SECTION

WAC 388-71-0951 Who is required to complete the specialized diabetes nurse delegation training, and when?

Specialized diabetes nurse delegation training is required before a nursing assistant, certified or registered, who meets the qualifications in WAC 388-71-0946 may be delegated the task of insulin injections.

NEW SECTION

WAC 388-71-0956 Is competency testing required for the nurse delegation core training and specialized diabetes training? Yes, passing the DSHS competency test is required for successful completion of nurse delegation core training and specialized diabetes training, as provided in WAC 388-71-1101 through 388-71-1130.

PEER MENTORING AND ON-THE-JOB TRAININGNEW SECTION

WAC 388-71-0961 What is peer mentoring? (1) For long-term care workers who begin to work after July 1, 2011, peer mentoring is a structured, formal program offering support and guidance to new long-term care workers for at least one hour per week in the first ninety days of work.

(2) Peer mentoring is provided by a long-term care worker who has completed twelve hours of peer mentor training and is mentoring no more than ten long-term care workers at any given time.

(3) Participant consent must be obtained prior to providing or receiving peer mentoring.

(4) Effective July 1, 2011, for the person receiving mentoring, the hours spent in mentoring may count for up to twelve hours toward the completion of basic training requirements.

NEW SECTION

WAC 388-71-0966 What is on-the-job training?

Effective July 1, 2011, on-the-job training is provided by an approved instructor directly observing and documenting, in writing, a long-term care worker's completion of skills.

(1) Documentation of on-the-job training must include the number of hours and verification of the demonstrated skills.

(2) For the person receiving on the job training, the hours spent in on-the-job training may count for up to twelve hours toward the completion of basic training requirements.

NEW SECTION

WAC 388-71-0970 What documentation is required for completion of each training? Orientation, safety, basic training, including core and population specific, the thirty hour training, the twelve hour developmental disabilities parent provider training, continuing education, and nurse delegation core and specialized diabetes training, must be documented by a transcript or certificate(s) of successful completion of training issued by an approved instructor or approved training entity that includes:

(1) The name of the trainee;

(2) The name of the training;

(3) The number of hours of the training;

(4) The name of the approved training entity and/or identification number;

(5) The instructor's name and/or identification number;

(6) The instructor's signature or an authorized signature from the training entity the qualified instructor is training on behalf of; and

(7) The completion date of the training.

The long-term care worker must retain the original certificate or transcript. A home care agency must keep a copy of the certificate or transcript on file.

NEW SECTION

WAC 388-71-0973 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved instructor or approved training entity who has provided all seventy-five hours of training; or

(2) An approved instructor or approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a DSHS certificate issued by an approved instructor or approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same instructor or training entity, then an approved instructor or approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing

education. Only a DSHS or training partnership twelve-hour continuing education certificate can be submitted by a certified home care aide applying to the department of health for recertification.

(4) The long-term care worker and certified home care aide must retain the original seventy-five hour training certificate and any twelve-hour continuing education training certificates. Training entities must keep a copy of these certificates on file.

HOME CARE AIDE CERTIFICATION

NEW SECTION

WAC 388-71-0975 Who is required to obtain certification as a home care aide, and when? All long-term care workers, who do not fall within the exemptions under the department of health WAC 246-980-070, must obtain certification within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 1, 2011.

CONTINUING EDUCATION

NEW SECTION

WAC 388-71-0985 What is continuing education? (1) Continuing education is additional caregiving-related training designed to keep current a person's knowledge and skills. The same continuing education courses may not be repeated for credit unless it is a new or more advanced training on the same topic.

(2) DSHS must approve continuing education curricula and instructors.

NEW SECTION

WAC 388-71-0990 How many hours of continuing education are required each year? (1) Until June 30, 2011, individual providers and home care agency caregivers must complete at least ten hours of continuing education each calendar year after the year in which they successfully complete basic training. If the ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

(2) Effective July 1, 2011, all certified home care aides must complete twelve hours of continuing education each year as described in department of health WAC 246-980-110.

(3) If exempt from certification, all long-term care workers, must complete twelve hours of continuing education per calendar year unless exempt from continuing education as described in WAC 388-71-1001.

(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education. The instructor must establish a way for the student to ask the instructor questions.

NEW SECTION

WAC 388-71-1001 What long-term care workers are exempt from the continuing education requirement? Unless voluntarily certified as a home care aide, continuing education is not required for:

- (1) Individual providers caring only for his or her biological, step, or adoptive son or daughter; and
- (2) Before June 30, 2014, an individual provider who provides twenty hours or less of care for one person in any calendar month.

NEW SECTION

WAC 388-71-1006 What kinds of training topics are required for continuing education? Continuing education must be on a topic relevant to the care setting, care needs of participants, or long-term care worker career development. Topics may include but are not limited to:

- (1) Participant rights;
- (2) Personal care services;
- (3) Mental disorders;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive participant behavior support;
- (10) Developing or improving participant-centered activities;
- (11) Dealing with wandering;
- (12) Dealing with aggressive participant behaviors;
- (13) Medical conditions; and
- (14) Nurse delegation core and specialized diabetes.

CURRICULUM APPROVAL

NEW SECTION

WAC 388-71-1021 What trainings must be taught with a curriculum approved by DSHS? (1) Orientation, safety, basic training (core and population specific training), and continuing education must be taught using a curriculum approved by DSHS:

(2) The nurse delegation core and diabetes training must use only the DSHS curriculum.

(3) A curriculum requiring approval must be approved before it is used. Approval will be based on curriculum review, as described under WAC 388-71-1026 through 388-71-1033.

NEW SECTION

WAC 388-71-1026 What must be submitted to DSHS for basic training curriculum to be approved? Curricula must be submitted to DSHS for approval of one or both sections (core competencies and population competencies) of the seventy hours required for basic training. When submitting the core or population specific sections of basic training curriculum for DSHS approval, it must include:

(1) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives are located in the curriculum for core competencies and learning objectives, as described under WAC 388-71-0911 and the population specific competencies and learning objectives, as described under in WAC 388-71-0921;

(2) Any materials students will receive such as a textbook or student manual, handouts, and any audio-visual materials;

(3) The table of contents or outline of the curriculum with the allotted time for each section;

(4) The personal care tasks, described in WAC 388-71-0911 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves) demonstration checklists;

(5) The teacher's guide or manual that includes for each section of the curriculum:

(a) Goals and objectives;

(b) How that section will be taught including teaching methods and learning activities that incorporate adult learning principles;

(c) Methods instructors will use to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(d) A list of sources or references, if any, used to develop the curriculum;

(e) Methods of teaching and how accommodations will be made for long-term care workers with limited English proficiency and/or learning disabilities; and

(f) Description and proof of how input from consumers and long-term care worker representatives was obtained in the development of the curriculum.

(6) In addition, for curricula being submitted for the core competency section of the basic training as described in WAC 388-71-0911, the curriculum must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

Substantial changes to a previously-approved curriculum must be approved before they are used.

NEW SECTION

WAC 388-71-1031 What is the curriculum approval process for basic training? (1) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum, and if disapproved, the reason for denial.

(2) If the curriculum is not approved, a revised curriculum may be submitted to DSHS for another review. If the reasons why the curriculum is not approved cannot be resolved, the submitter may seek review of the nonapproval decision from the assistant secretary of aging and disability services administration. The assistant secretary's review decision shall be the final decision of DSHS; no other administrative review is available to the submitter.

NEW SECTION

WAC 388-71-1033 What is the curriculum approval process for orientation, safety, and continuing education

training? (1) Effective January 1, 2011, in order to be approved for any orientation and safety training, submit DSHS form 16-228 and class syllabus at least forty-five days in advance of delivery of the training.

(2) Effective July 1, 2011, in order to be approved for any continuing education training, submit DSHS form 16-228 and class syllabus at least forty-five days in advance of delivery of the training.

INSTRUCTOR QUALIFICATIONS, APPROVAL, AND RESPONSIBILITIES

NEW SECTION

WAC 388-71-1045 What are an instructor's or training entity's responsibilities? The instructor or training entity is responsible for:

(1) Coordinating and teaching classes;

(2) Assuring that the curriculum used is DSHS-approved and taught as designed;

(3) Selecting and monitoring qualified guest speakers, where applicable;

(4) Administering or overseeing the administration of the DSHS competency tests for nurse delegation core and specialized diabetes trainings;

(5) Maintaining training records including student tests and attendance records for a minimum of six years;

(6) Reporting training data to DSHS in DSHS-identified timeframes; and

(7) Issuing or reissuing training certificates to students.

NEW SECTION

WAC 388-71-1050 Must instructors be approved by DSHS? All instructors for orientation, safety, basic training (core and population specific training), nurse delegation core training and nurse delegation specialized diabetes training, and continuing education must meet the minimum qualifications under WAC 388-71-1055 through 388-71-1076.

(1) DSHS must approve and/or contract with an instructor to conduct orientation, safety, basic training (core and population specific training), nurse delegation core training and nurse delegation specialized diabetes training, and continuing education. DSHS may contract with instructors using any applicable contracting procedures.

(2) The training partnership must ensure that all instructors meet the minimum qualifications under this chapter.

NEW SECTION

WAC 388-71-1055 What are the minimum qualifications for an instructor of orientation, safety, basic training (core and population specific training), nurse delegation core training, nurse delegation specialized diabetes training, and continuing education? An instructor for orientation, safety, basic training (core and population specific training), nurse delegation core training, nurse delegation specialized diabetes training, and continuing education must meet the following minimum qualifications:

(1) General qualifications:

(a) Twenty-one years of age; and

(b) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.

(2) Education and work experience:

(a) Upon initial approval or hire, an instructor must:

(i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or

(ii) Have an associate degree in a health field and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-101 WAC, or home care setting; or

(iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-101 WAC, or home care setting.

(3) Teaching experience:

(a) Must have one hundred hours of teaching adults on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements in WAC 388-71-1066.

(4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units being taught;

(5) Instructors who will administer nurse delegation tests must have experience or training in assessment and competency testing;

(6) If required under WAC 388-71-0875, instructors must successfully complete basic training and obtain home care aide certification prior to beginning to train others; and

(7) An instructor for nurse delegation core and specialized diabetes trainings must have a current Washington state RN license in good standing without practice restrictions.

NEW SECTION

WAC 388-71-1066 What must be included in a class on adult education? A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

- (1) Adult education theory and practice principles;
- (2) Instructor facilitation techniques;
- (3) Facilitating learning activities for adults;
- (4) Administering competency testing; and

(5) Working with adults with special training needs (for example, English as a second language or learning or literacy issues).

NEW SECTION

WAC 388-71-1076 What is a guest speaker, and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach on a specific topic. A guest speaker:

(a) May only teach a specific subject in which he or she has expertise, background, and experience that establishes his or her expertise on that specific topic;

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must ensure the guest speaker meets these minimum qualifications;

(b) Maintain documentation of the guest speaker's qualifications and background;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for ensuring the required content is taught.

(3) DSHS does not approve guest speakers.

NEW SECTION

WAC 388-71-1081 What is the instructor approval process and what are the other related documentation requirements for the training partnership? (1) The training partnership must:

(a) Verify, document, keep on file, and make available to the department upon request, that all instructors meet the minimum instructor qualifications in WAC 388-71-1055 for the course they plan to teach;

(b) Teach using a DSHS approved curriculum;

(c) Notify DSHS in writing when changing training plans, including:

(i) Name and schedule of training(s) the partnership will conduct;

(ii) Name of approved curriculum(s) the partnership will use; and

(iii) Name of the instructor.

(d) Ensure that DSHS competency tests are administered when conducting nurse delegation core or specialized diabetes training;

(e) Keep a copy of long-term care worker certificates on file for six years and give the original certificate to the trainee;

(f) Keep attendance records and testing records of long-term care workers trained and tested on file for six years; and

(g) Report training data to DSHS when requested by the department.

(2) The department may conduct a random audit at any time to review instructor qualifications.

PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

NEW SECTION

WAC 388-71-1091 What physical resources are required for classroom training and testing? (1) Classroom facilities used for classroom training must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning, such as white boards and flip charts. Appropriate supplies and equipment must be provided for

teaching and practice of caregiving skills in the class being taught.

(2) Testing sites for nurse delegation core and specialized diabetes training must provide adequate space for testing, comfort, lighting, lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

NEW SECTION

WAC 388-71-1096 What standard training practices must be maintained for classroom training and testing? The following training standards must be maintained for classroom training and testing:

- (1) Training, including all breaks, must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Students attending classroom training must not be expected to leave the class to attend job duties, except in an emergency.

COMPETENCY TESTING FOR NURSE DELEGATION CORE AND SPECIALIZED DIABETES TRAINING

NEW SECTION

WAC 388-71-1101 What is competency testing? Competency testing is evaluating a trainee to determine if he or she can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course. The DSHS-developed competency test is only required for nurse delegation core and specialized diabetes trainings.

NEW SECTION

WAC 388-71-1106 What components must competency testing include? Competency testing must include the following components:

- (1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate to the training;
- (2) Written evaluation to show knowledge of the learning objectives included in the training; and
- (3) A scoring guide for the tester with clearly stated scoring criteria and minimum proficiency standards.

NEW SECTION

WAC 388-71-1111 What experience or training must individuals have to be able to perform competency testing? Individuals who perform competency testing must have documented experience or training in assessing competencies.

NEW SECTION

WAC 388-71-1120 How must competency test administration be standardized? To standardize competency test administration, testing must include the following components:

- (1) An instructor for the course who meets all minimum qualifications for the course he or she teaches must oversee all testing; and
- (2) The tester must follow the DSHS guidelines for:
 - (a) The maximum length of time allowed for the testing;
 - (b) The amount and nature of instruction given students before beginning a test;
 - (c) The amount of assistance to students allowed during testing;
 - (d) The accommodation guidelines for students with disabilities; and
 - (e) Accessibility guidelines for students with limited English proficiency.

NEW SECTION

WAC 388-71-1125 What form of identification must long-term care workers show before taking a competency test? Long-term care workers must show photo identification before taking a competency test.

NEW SECTION

WAC 388-71-1130 How many times may a competency test be taken? For the trainings under WAC 388-71-0936 and 388-71-0941, competency testing may be taken twice. If the test is failed a second time, the person must retake the course before taking the test for that course again.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-05665	What definitions apply to WAC 388-71-05670 through 388-71-05909?
WAC 388-71-05670	What is orientation?
WAC 388-71-05675	What content must be included in an orientation?
WAC 388-71-05680	Is competency testing required for orientation?
WAC 388-71-05685	Is there a challenge test for orientation?
WAC 388-71-05690	What documentation is required for orientation?
WAC 388-71-05695	Who is required to complete orientation, and when must it be completed?
WAC 388-71-05700	What is basic training?

WAC 388-71-05705	Is there an alternative to the basic training for some health care workers?	WAC 388-71-05790	Is competency testing required for continuing education?
WAC 388-71-05710	What core knowledge and skills must be taught in basic training?	WAC 388-71-05795	May basic or modified basic training be completed a second time and used to meet the continuing education requirement?
WAC 388-71-05715	Is competency testing required for basic training?	WAC 388-71-05799	What are the documentation requirements for continuing education?
WAC 388-71-05720	Is there a challenge test for basic training?	WAC 388-71-05805	What is nurse delegation core training?
WAC 388-71-05725	What documentation is required for successful completion of basic training?	WAC 388-71-05810	What knowledge and skills must nurse delegation core training include?
WAC 388-71-05730	Who is required to complete basic training, and when?	WAC 388-71-05815	Is competency testing required for nurse delegation core training?
WAC 388-71-05735	What is modified basic training?	WAC 388-71-05820	Is there a challenge test for nurse delegation core training?
WAC 388-71-05740	What knowledge and skills must be included in modified basic training?	WAC 388-71-05825	What documentation is required for successful completion of nurse delegation core training?
WAC 388-71-05745	Is competency testing required for modified basic training?	WAC 388-71-05830	Who is required to complete nurse delegation core training, and when?
WAC 388-71-05750	Is there a challenge test for modified basic training?	WAC 388-71-05832	What is safety training?
WAC 388-71-05755	What documentation is required for successful completion of modified basic training?	WAC 388-71-05835	What is competency testing?
WAC 388-71-05760	Who may take modified basic training instead of the full basic training?	WAC 388-71-05840	What components must competency testing include?
WAC 388-71-05765	What are the training requirements and exemptions for parents who are individual providers for their adult children receiving services through DDD?	WAC 388-71-05845	What experience or training must individuals have to be able to perform competency testing?
WAC 388-71-05770	What are the training requirements and exemptions for parents who are individual providers for their adult children who do not receive services through DDD?	WAC 388-71-05850	What training must include the DSHS-developed competency test?
WAC 388-71-05775	What is continuing education?	WAC 388-71-05855	How must competency test administration be standardized?
WAC 388-71-05780	How many hours of continuing education are required each year?	WAC 388-71-05860	What form of identification must providers show a tester before taking a competency or challenge test?
WAC 388-71-05785	What kinds of training topics are required for continuing education?	WAC 388-71-05865	How many times may a competency test be taken?

WAC 388-71-05870	What are an instructor's or training entity's responsibilities?	WAC 388-71-0826	Who is required to complete the specialized diabetes nurse delegation training, and when?
WAC 388-71-05875	Must instructors be approved by DSHS?		
WAC 388-71-05880	Can DSHS deny or terminate a contract with an instructor or training entity?		
WAC 388-71-05885	What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic training?		
WAC 388-71-05890	What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?		
WAC 388-71-05895	What additional qualifications are required for instructors of nurse delegation core training and specialized diabetes nurse delegation training?		
WAC 388-71-05899	What must be included in a class on adult education?		
WAC 388-71-05905	What physical resources are required for basic, modified basic, or nurse delegation core classroom training and testing?		
WAC 388-71-05909	What standard training practices must be maintained for basic, modified basic, or nurse delegation core classroom training and testing?		
WAC 388-71-0801	What is specialized diabetes nurse delegation training?		
WAC 388-71-0806	What knowledge and skills must specialized diabetes nurse delegation training include?		
WAC 388-71-0811	Is competency testing required for the specialized diabetes nurse delegation training?		
WAC 388-71-0816	Is there a challenge test for specialized diabetes nurse delegation training?		
WAC 388-71-0821	What documentation is required for successful completion of specialized diabetes nurse delegation training?		
AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)			
<p>WAC 388-112-0001 What is the purpose of this chapter? The <u>purpose of this chapter</u> is to describe the residential long-term care training requirements ((under this chapter)) that apply to:</p> <p class="list-item-l1">(1) All <u>long-term care workers</u>:</p> <p class="list-item-l2">(a) <u>Providing direct care in adult family homes licensed under chapter 70.128 RCW and chapter 388-76 WAC</u>; ((and))</p> <p class="list-item-l2">((2) All)) (b) <u>Providing direct care in boarding homes licensed under chapter 18.20 RCW and chapter 388-78A WAC</u>; and</p> <p class="list-item-l2">(c) <u>Providing instruction and support care in the supported living program certified under chapter 71A.12 RCW and chapter 388-101 WAC</u>.</p> <p class="list-item-l1">(2) <u>Applicants for an adult family home to be licensed under chapter 70.128 RCW</u>:</p> <p class="list-item-l1">(3) <u>Entity representatives for adult family homes licensed under chapter 70.128 RCW</u>:</p> <p class="list-item-l1">(4) <u>Resident managers for adult family homes licensed under chapter 70.128 RCW</u>:</p> <p class="list-item-l1">(5) <u>Applicants for supported living certification under chapter 71A.12 RCW</u>:</p> <p class="list-item-l1">(6) <u>Administrators for supported living under chapter 71A.12 RCW</u>; and</p> <p class="list-item-l1">(7) <u>Administrators or designee for boarding homes licensed under chapter 18.20 RCW</u>.</p>			
AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)			
<p>WAC 388-112-0005 What definitions apply to this chapter? <u>"Applicant"</u> means an individual, partnership, corporation, or other entity seeking to operate an adult family home or a supported living program.</p> <p><u>"Caregiver"</u> means anyone providing hands-on personal care to another person including but not limited to caring, reminding, or supervision of residents, on behalf of an adult family home or boarding home, except volunteers who are directly supervised.)</p> <p><u>"Care team"</u> includes the individual and everyone involved in his or her care. The care team can include family, friends, doctors, nurses, caregivers, social workers and case managers. The role of the care team is to support the well-being of the individual, however, the individual directs the service plan.</p> <p><u>"Certified home care aide"</u> means a person who has obtained and maintains a home care aide certification through the department of health.</p> <p><u>"Challenge test"</u> means a competency test taken without first taking the class for which the test is designed.)</p> <p><u>"Competency"</u> ((means the minimum level of information and skill trainees are required to know and be able to demonstrate)) defines the integrated knowledge, skills, or</p>			

behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

"DDD" refers to the division of developmental disabilities.

"Designee" means a person in a boarding home who supervises ((earegivers)) long-term care workers and who is designated by a boarding home administrator to take the trainings in this chapter required of the boarding home administrator. A boarding home administrator may have more than one designee.

"Direct care worker" means a paid long-term care worker who provides direct, hands-on, personal care services to individuals with disabilities or the elderly requiring long-term care services.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the ((earegiver)) long-term care worker.

"DSHS" or "department" refers to the department of social and health services.

"Entity representative" means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

"Hands-on care" means providing personal care services.

"Home" refers to adult family homes and boarding homes.

"Indirect supervision" means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, and who is quickly and easily available to the ((earegiver)) long-term care worker, but not necessarily on-site.

"Individual" means a resident, as described under RCW 70.129.005, or person receiving long-term care services from a boarding home, adult family home, or supported living provider.

"Instruction and support services staff" are staff of supported living providers whose job function is the provision of instruction and support services to individuals. Instruction and support services staff shall also include employees of the contractor whose job function is the supervision of instruction and support services staff. In addition, applicants, prior to initial supported living certification, and administrators, prior to assuming duties, who may provide instruction and support to individuals or who directly supervise instruction and support staff, shall be considered instruction and support staff for the purposes of the applicable training requirements of this chapter.

"Learning ((outcomes)) objectives" ((means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum)) are measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning

objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum designers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

"Long-term care worker" includes all persons providing personal care for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under title 71A RCW, all direct care workers in state-licensed boarding homes, adult family homes, respite care providers, and supported living providers.

Long-term care workers do not include persons providing personal care services in nursing homes subject to chapter 18.51 RCW; hospitals or other acute care settings; residential habilitation centers under chapter 71A.20 RCW; facilities certified under 42 CFR, Part 483; hospice agencies subject to chapter 70.127 RCW; adult day centers; adult day health centers; persons who are otherwise licensed to provide health care services, such as nurses and certified nursing assistants; and those people providing personal care on an independent basis to private-pay consumers. This last instance would occur when personal care services are provided directly to an individual who pays for the services out-of-pocket without assistance from DSHS

"Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living, as described under WAC 388-106-0010, provided because of a person's functional limitations.

"Provider" means any person who is licensed by the department to operate an adult family home and meets the requirements of chapter 388-76 WAC and this chapter or any corporation, partnership, or limited liability company that is licensed under chapter 388-76 WAC to operate an adult family home and meets the requirements of this chapter.

((**"Resident"** means a person residing and receiving long-term care services at a boarding home or adult family home. As applicable, the term resident also means the resident's legal guardian or other surrogate decision maker.))

"Resident manager" means a person employed or designated by the provider to manage the adult family home who meets the requirements in chapter 388-76 WAC and this chapter.

"Routine interaction" means contact with residents that happens regularly.

"Service provider" means a person or entity certified by the department to deliver services and supports to meet the identified needs of the individual receiving services under chapter 71A.12 RCW. The term includes the state operated living alternative (SOLA) program.

"Supported living provider" means providers offering instruction and support services. These providers include state operated living alternatives (SOLA), supported living, group training homes, alternative living, companion homes, licensed staff residential, and children's group facilities that have a contract with the department.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0010 When do the training requirements go into effect? The training requirements ((ef)) under this chapter ((begin September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and apply to:

(1) Adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who are hired or begin to provide hands on personal care to residents subsequent to September 1, 2002; and

(2) Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 and this chapter. Existing adult family home providers, resident managers, and caregivers, and boarding home administrators, designees, and caregivers, who have not successfully completed the training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130 are subject to all applicable requirements of this chapter. However, until September 1, 2002, nothing in this chapter affects the current training requirements under RCW 74.39A.010, 74.39A.020, 70.128.120, or 70.128.130) apply to long-term care workers hired on or after January 1, 2011, unless exempt under RCW 18.88B.040. The requirements also apply to applicants for licenses or certifications in accordance with chapters 388-76, 388-78A, and 388-101 WAC.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0015 What is orientation? (1) Orientation ((provides basic introductory information appropriate to the residential care setting and population served)) is a training of two hours regarding the long-term care worker's role as long-term care workers and the applicable terms of employment.

(2) The department ((does not)) must pre-approve ((specific)) orientation ((programs, materials, or trainers for homes)) curricula and instructors.

(3) No test is required for orientation.

(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

NEW SECTION

WAC 388-112-0018 What is safety training? (1) Safety training is a training of three hours that includes basic safety precautions, emergency procedures, and infection control.

(2) The department must approve safety training curricula and instructors.

(3) No test is required for safety training.

(4) One hour of completed classroom instruction or other form of training (such as video or on-line course) equals one hour of training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0020 What content must be included in an orientation and safety training? ((Orientation may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation.)) Orientation and safety training must include introductory information in the following areas:

(1) The care setting;

(2) The characteristics and special needs of the population served;

(3) Fire and life safety, including:

(a) Emergency communication (including phone system ((if one exists)));

(b) Evacuation planning (including fire alarms and fire extinguishers where they exist);

(c) Ways to handle resident injuries and falls or other accidents;

(d) Potential risks to ((residents)) individuals or staff (for instance, aggressive ((resident)) individuals' behaviors and how to handle them); and

(e) The location of a home's or service provider's policies and procedures.

(4) Communication skills and information, including:

(a) Methods for supporting effective communication among the ((resident/)) individual, guardian, staff, and family members;

(b) Use of verbal and nonverbal communication;

(c) Review of written communications and/or documentation required for the job, including the ((resident's)) individual's service plan;

(d) Expectations about communication with other home staff; and

(e) Whom to contact about problems and concerns.

(5) ((Universal)) Standard precautions and infection control, including:

(a) Proper hand washing techniques;

(b) When to wear gloves and how to correctly put them on and take them off;

(c) Protection from exposure to blood and other body fluids;

((e))) (d) Appropriate disposal of contaminated/hazardous articles;

((d))) (e) Reporting exposure to contaminated articles, blood, or other body fluids; and

((e))) (f) What staff should do if they are ill or injured, including whom to report this to.

(6) ((Resident)) Individual rights, including:

(a) The ((resident's)) individual's right to confidentiality of information about the ((resident)) individual;

(b) The ((resident's)) individual's right to participate in making decisions about the ((resident's)) individual's care, and to refuse care;

(c) Staff's duty to protect and promote the rights of each ((resident)) individual, and ((assist the resident to)) help the individual exercise his or her rights;

(d) How and to whom staff should report any concerns they may have about ((a resident's)) an individual's decision concerning the ((resident's)) individual's care;

(e) Staff's duty to report any suspected abuse, abandonment, neglect, or financial exploitation of ((a resident)) an individual;

(f) Advocates that are available to help ((residents)) individuals (LTC ombudsmen, organizations); and

(g) Complaint lines, hot lines, and ((resident)) individual grievance procedures.

(7) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for ((residents)) individuals.

(8) Orientation and safety training may include the use of videotapes, audiotapes, and other electronic media if the person overseeing the orientation is available to answer the questions or concerns of the person(s) receiving the orientation.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0035 What documentation is required for orientation and safety training? The adult family home, boarding home, or supported living provider must maintain documentation of the completion of orientation and safety training, issued by the home or service provider, that includes:

(1) The trainee's name;

(2) A list of the specific information taught;

(3) The number of hours of the training;

(4) The signature of the person overseeing orientation((; indicating completion of the required information)) and safety training;

((4)) (5) The trainee's date of employment;

((5)) (6) The name of the home or service provider giving the orientation and safety training; and

((6)) (7) The date(s) of orientation and safety training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0040 Who is required to complete orientation and safety training, and when must it be completed? ((Adult family home))

((1)) All ((paid or volunteer staff in adult family homes who begin work September 1, 2002 or later)) long-term care workers must complete orientation and safety training before ((having routine interaction with residents)) providing care to individuals. Orientation and safety training must be provided by ((appropriate)) department-approved adult family home, boarding home, or supported living staff.

((Boarding home

((Boarding home administrators (or their designees), caregivers, and all paid or volunteer staff who begin work September 1, 2002 or later must complete orientation before having routine interaction with residents. Orientation must be provided by appropriate staff.))

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0045 What is basic training? (1) Basic training is a training of seventy hours which includes ((the))

(a) The core ((knowledge)) competencies and skills that ((caregivers)) long-term care workers need in order to provide personal care services effectively and safely;

(b) Practice and demonstration of skills;

(c) Population specific competencies.

(2) DSHS must pre-approve basic training curricula.

(3) For instruction and support services staff, orientation, safety training, and basic training are all included in the developmental disabilities supported living providers training.

(4) Effective July 1, 2011, only up to sixteen hours may be applied in any combination of peer mentoring or on-the-job training;

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

NEW SECTION

WAC 388-112-0053 What topics must be taught in the core competencies of basic training? Basic training must include all of the competencies under WAC 388-112-0055 for the following topics:

(1) Communication skills;

(2) Long-term care worker self-care;

(3) Problem solving;

(4) Participant rights and maintaining dignity;

(5) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;

(6) Participant directed care;

(7) Cultural sensitivity;

(8) Body mechanics;

(9) Fall prevention;

(10) Skin and body care;

(11) Long-term care worker roles and boundaries;

(12) Supporting activities of daily living;

(13) Food preparation and handling;

(14) Medication assistance;

(15) Infection control, blood-borne pathogens, HIV/AIDS; and

(16) Grief and loss.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0055 What ((knowledge and skills must be taught in)) are the core competencies and learning objectives for basic training? ((1)) The ((basic training knowledge and skills must include all of the learning outcomes and competencies published by the department for the following core knowledge and skills:

((a) Understanding and using effective interpersonal and problem solving skills with the resident, family members, and other care team members;

((b) Taking appropriate action to promote and protect resident rights, dignity, and independence;

((c) Taking appropriate action to promote and protect the health and safety of the resident and the caregiver;

((d) Correctly performing required personal care tasks while incorporating resident preferences, maintaining the res-

ident's privacy and dignity, and creating opportunities that encourage resident independence;

(e) Adhering to basic job standards and expectations;

(2) The basic training learning outcomes and competencies may be obtained from the DSHS aging and adult services administration) core competencies describe the behavior and skills that a long-term care worker must exhibit when working with individuals. Learning objectives are associated with each competency.

(1) Regarding communication, communicate effectively and in a respectful and appropriate manner with individuals, family members, and other care team members:

(a) Recognize how verbal and non-verbal cues impact communication with the participant and care team;

(b) Engage and respect the participant through verbal and non-verbal communication;

(c) Listen attentively and ensure that the participant understands what has been communicated;

(d) Recognize and acknowledge individuals' communication for indicators of pain, confusion, or misunderstanding;

(e) Utilize communication strategies to deal with difficult situations; and

(f) Recognize common barriers to effective communication and identify how to eliminate them.

(2) Regarding long-term care worker self-care, take appropriate action to reduce stress and avoid burnout:

(a) Identify behaviors, practices and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout; and the importance of taking action to practice self-care to avoid burnout.

(3) Regarding the competency of effective problem solving, use effective problem solving skills:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them.

(4) Regarding the competency of participant rights and dignity, take appropriate action to promote and protect an individual's legal and human rights:

(a) Identify participant rights that are protected by federal and Washington state laws;

(b) Protect an individual's confidentiality;

(c) Promote dignity, privacy, and encourage an individual's maximum independence when providing care; and

(d) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use.

(5) Regarding the competency of abuse and mandatory reporting, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as described under RCW 74.34.020 through 74.34.040; and

(b) Identify common symptoms of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of participant directed care, encourage the participant to direct his or her care:

(a) Explain the importance of participant directed care;

(b) Use problem solving skills that balance an individual's choice with safety; and

(c) Report concerns when an individual refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care; and

(b) Utilize methods to determine and ensure an individual's beliefs are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the service plan.

(9) Regarding the competency on fall prevention, prevent or reduce the risk of falls:

(a) Identify fall risk factors and take action to reduce fall risks for an individual; and

(b) Take proper steps to assist an individual who is falling or has fallen and is on the floor.

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing an individual's skin, when to observe it and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what to do if an individual develops a pressure ulcer;

(e) Identify when to report skin concerns and to whom;

(f) Describe personal care practices to protect and maintain an individual's skin integrity including how often an individual must change position when sitting or lying for extended periods, proper positioning and transfers; and

(g) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, where, how, and why to obtain information about an individual's condition or disease for which they are receiving services and use this information to provide appropriate, individualized care;

(b) Describe an individual's baseline based on information provided in the service plan and explain why it is important to know an individual's baseline;

(c) Identify changes in an individual's physical, mental, and emotional state through observation;

(d) Report changes from baseline and/or concerns to the appropriate care team member;

(e) Identify basic job standards and requirements (e.g. coming to work on time) and describe how maintaining these standards are critical to an individual's safety and well-being;

(f) Explain the purpose of a service plan and describe how it is created and modified;

(g) Use an individual's service plan to direct a worker's job tasks and any participant directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-112-0195, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in it;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for the following personal care tasks:

(i) Helping an individual walk;

(ii) Transferring an individual from a bed to a wheelchair;

(iii) Turning and repositioning an individual in bed;

(iv) Providing mouth care;

(v) Cleaning and storing dentures;

(vi) Shaving a face;

(vii) Providing fingernail care;

(viii) Providing foot care;

(ix) Providing a bed bath;

(x) Assisting an individual with a weak arm to dress;

(xi) Putting knee-high elastic stockings on an individual;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting an individual to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance.

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate participant preferences, maintain privacy and dignity, encourage independence, and assure comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing an individual's bowel and bladder functioning baseline and when to report concerns.

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact an individual's health;

(b) Plan, shop, and prepare meals for an individual according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and participant preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and to whom;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for an individual;

(e) Recognize when an individual's food choices vary from specifications on the care plan, describe when and to whom to report concerns;

(f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including: avoiding cross contamination from one food to another, safe storage requirements for cooling of leftover foods, including depth, types of containers, and temperatures, the need to maintain food at proper temperatures to limit bacterial growth and what are the safe food storage and holding temperatures for both cold and hot foods, best practices for thawing and re-heating food, and using clean gloves and utensils when preparing food;

(h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and

(i) Describe why a long-term care worker with certain types of illnesses and/or symptoms must not prepare food.

Long-term care workers who complete a DSHS-approved basic training meet the training requirements for adult family homes in RCW 70.128.250.

(14) Regarding the competency of medication assistance, appropriately assist with medications:

(a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described under chapter 246-888 WAC;

(b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;

(c) Identify common symptoms of medication side effects and when and to whom to report concerns;

(d) Store medications according to safe practices;

(e) Describe, in the proper sequence, each of the five rights of medication assistance; and

(f) Identify what to do for medication-related concerns, including describing ways to work with an individual who refuses to take medications, identifying when and to whom to report when an individual refuses medication or there are other medication-related concerns, and identifying what is

considered a medication error and when and to whom it must be reported.

(15) Regarding the competency of infection control, blood borne pathogens and HIV/AIDS, implement best practices to prevent and control the spread of infections:

(a) Identify common infections, ways that infections are spread, and symptoms of infections;

(b) Describe the purpose, benefit and proper implementation of standard precautions in infection control;

(c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;

(d) Demonstrate proper hand washing and putting on and taking off gloves;

(e) Identify immunizations that any adult needs to reduce the spread of viruses and bacteria;

(f) Describe laundry and housekeeping measures that help in controlling the spread of infection;

(g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;

(h) Describe what BB pathogens are and how they are transmitted;

(i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;

(j) Identify measures to take to prevent BB diseases;

(k) Describe what to do if exposed to BB pathogens and how to report an exposure;

(l) Describe how HIV works in the body;

(m) Explain that testing and counseling for HIV/AIDS is available;

(n) Describe the common symptoms of HIV/AIDS;

(o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and

(p) Explain the importance of emotional issues and support for individuals and long-term care workers.

Long-term care workers who complete a DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

(16) Regarding the competency on grief and loss, support yourself and the individual in the grieving process:

(a) Define grief and loss;

(b) Describe common losses an individual or long-term care worker may experience;

(c) Identify common symptoms associated with grief and loss;

(d) Describe why self-care is important during the grieving process; and

(e) Identify beneficial ways and resources to work through feelings of grief and loss..

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-112-0059 What is the only developmental disabilities supported living provider training that is required and what must it include? (1) The only developmental disabilities supported living provider training that is

required is an integrated seventy-five hour curriculum designed specifically for instruction and support services staff in the supported living programs.

(2) Developmental disabilities supported living provider training must include the following topics:

(a) Individual rights and dignity;

(b) Abuse, neglect, financial exploitation, and mandatory reporting;

(c) Observation and reporting;

(d) Instruction and support activities;

(e) Communication skills;

(f) Problem solving;

(g) Cultural awareness and sensitivity;

(h) Infection control;

(i) Blood-borne pathogens and HIV/AIDS;

(j) Skin care;

(k) Fall prevention;

(l) Health and functioning;

(m) Medication assistance;

(n) Instruction and support services staff roles and boundaries;

(o) Self-care; and

(p) Grief and loss.

(3) Only the curriculum developed by DSHS may be used for the developmental disabilities supported living provider training.

(4) The developmental disabilities supported living provider training may include up to sixteen hours of on-the-job training.

(5) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of training.

(6) In order to become certified as a home care aide, long-term care workers who complete this course must take an additional core competency course.

NEW SECTION

WAC 388-112-0062 What is on-the-job training? On-the-job training includes:

(1) A qualified instructor directly observing and documenting, in writing, a long-term care worker's completion of skills. Documentation of on-the-job training must include verification of the demonstrated skills.

(2) The hours spent in on-the-job training may count for up to sixteen hours toward the completion of basic training. Only up to sixteen hours may be applied in any combination of peer mentoring or on-the-job training effective July 1, 2011.

NEW SECTION

WAC 388-112-0064 What is peer mentoring? (1) For long-term care workers who begin to work after July 1, 2011, peer mentoring is a structured, formal program offering support and guidance to new long-term care workers for at least one hour per week in the first ninety days of work.

(2) Peer mentoring is provided by a long-term care worker who has completed twelve hours of peer mentor training and is mentoring no more than ten long-term care workers at any given time.

(3) Participant consent must be obtained prior to providing or receiving peer mentoring.

(4) Effective July 1, 2011, for the person receiving mentoring, the hours spent in mentoring may count for up to sixteen hours toward the completion of basic training requirements. Only up to sixteen hours may be applied in any combination of peer mentoring or on-the-job training effective July 1, 2011.

NEW SECTION

WAC 388-112-0066 What knowledge or skills must be taught in the population specific component of basic training? Population specific basic training is training on topics that are unique to the care needs of the population that the home or provider is serving. Population specific training must:

(1) Include the competencies and learning objectives published by the department for population specific training under WAC 388-112-0078 (1) through (5).

(2) Include competency testing to meet the licensing requirements for dementia, mental health, or developmental disabilities training for adult family homes and boarding homes; and

(3) Use only curricula developed by DSHS for the nurse delegation core, specialized diabetes trainings, and the developmental disabilities supported living provider training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0070 What documentation is required ((for successful)) to show completion of seventy hours of basic training that includes both core competencies and population specific competencies? (1) Basic training must be documented by a certificate(s) or transcript of ((successful)) completion of training, issued by the instructor or training entity, that includes:

(a) The name of the trainee;
 (b) The name of the training;
 (c) The name and/or the identification number of the instructor, home or training entity giving the training;
 (d) The number of hours of training;
 (e) The instructor's ((name and)) signature; and
 ((e)) (f) The completion date(((s))) of the training.

(2) The trainee must be given an original certificate(s) or transcript to keep for proof of completion of the training. A home must keep a copy of the certificate on file.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0075 Who is required to complete basic training, and when? Adult family homes

(1) Adult family home ((providers (including)) applicants and entity representatives ((as defined under chapter 388-76 WAC))) must complete basic training ((and demonstrate competency)) before operating an adult family home.

(2) Adult family home resident managers must complete basic training and demonstrate competency before providing services in an adult family home.

(3) ((Caregivers)) Long-term care workers in adult family homes must complete basic training within one hundred twenty days of ((when they begin providing hands-on personal care or within one hundred twenty days of September 1, 2002, whichever is later)) employment. Until ((competency in)) completion of the basic training ((has been demonstrated, caregivers)) long-term care workers may not provide hands-on personal care without indirect supervision.

Boarding homes

(4) Boarding home administrators (or their designees), except administrators with a current nursing home administrator license, must complete basic training ((and demonstrate competency)) within one hundred twenty days of employment ((or within one hundred twenty days of September 1, 2002, whichever is later)).

(5) ((Caregivers)) Long-term care workers must complete basic training within one hundred twenty days of ((when they begin providing hands-on personal care or within one hundred twenty days of September 1, 2002, whichever is later)) employment. Until ((competency in)) completion of the basic training ((has been demonstrated)), ((caregivers)) long-term care workers may not provide hands-on personal care without direct supervision.

Supported living providers

(6) Supported living applicants, administrators, and instruction and support services staff must complete the developmental disabilities supported living provider integrated basic training within one hundred twenty days of employment. Until completion of the basic training, long-term care workers may not provide hands-on personal care without indirect supervision.

NEW SECTION

WAC 388-112-0076 Which long-term care workers are exempt from basic training? (1) A person employed as a long-term care worker on December 31, 2010, who completed prior to January 1, 2011, all of the training requirements in effect on the date of his or her hire;

(2) A person employed as a long-term care worker on December 31, 2010, who completes within one hundred twenty days of hire, all of the training requirements in effect on the date of his or her hire;

(3) A person previously employed as a long-term care worker prior to December 31, 2010, who completed prior to January 1, 2011, all the training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point during the calendar year 2010;

(4) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW;

(5) Nursing assistants-certified under chapter 18.88A RCW;

(6) Certified counselors under chapter 18.19 RCW;

(7) Speech language pathologists or audiologists under chapter 18.35 RCW;

(8) Occupational therapists under chapter 18.59 RCW;

(9) Physical therapists under chapter 18.74 RCW;

(10) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 CFR, Part 483.35;

(11) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010;

(12) Parent providers as described in WAC 388-71-0885; and

(13) Until January 1, 2014, an individual provider who provides care to only one person for twenty hours or less in any calendar month.

A long term-care worker exempted by this section from the training requirements contained in RCW 74.39A.073 may not be prohibited from enrolling in the training.

NEW SECTION

WAC 388-112-0078 What trainings may be taught in the population specific component of the basic training?

Population specific training may include any of the following based on the population served:

- (1) Dementia specialty training;
- (2) Mental health specialty training;
- (3) Developmental disabilities specialty training;
- (4) Younger adults with physical disabilities;
- (5) Aging and older adults;
- (6) Nurse delegation core training; or
- (7) Nurse delegation specialized diabetes training.

NEW SECTION

WAC 388-112-0081 What topics must the training on young adults with physical disabilities include? (1) The training on young adults with physical disabilities must include all of the competencies and learning objectives under WAC 388-112-0083 for the following topics:

- (a) Introduction to physical disabilities;
- (b) Common physical disabilities and ability limitations;
- (c) Supporting individuals living with chronic conditions;
- (d) Independent living and individual-directed care; and
- (e) Social connections and sexual needs of adults living with disabilities.

NEW SECTION

WAC 388-112-0083 What are the competencies and learning objectives for the training on young adults with physical disabilities? The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on young adults with physical disabilities. Learning objectives are associated with each competency.

(1) Regarding the competency on young adults with physical disabilities, work effectively with young adults with physical disabilities based upon a basic understanding of disability:

(a) Identify basic information regarding physical disabilities, injuries, and illnesses that are more common in young adults;

(b) Describe the impact of changing and fluctuating abilities;

(c) Identify stereotypes, biases, and misconceptions regarding the perception of young adults with physical disabilities;

(d) Describe how biases, stereotypes, and misconceptions can influence care to young adults with physical disabilities;

(e) Identify and explain the Americans with Disabilities Act and rights for adults with physical disabilities; and

(f) Describe the value of personalizing care and support to the specific individual with a disability.

(2) Regarding the competency on common physical disabilities and ability limitations, provide individualized care based upon a basic understanding of common physical disabilities and their impact on functioning:

(a) Describe common physical disabilities, including paraplegia and quadriplegia, diabetes, multiple sclerosis, and pulmonary disease.

(b) Describe the characteristics and functional limitations of individuals with these specific disabilities.

(3) Regarding the competency on supporting individuals living with chronic conditions, provide appropriate care by recognizing chronic secondary conditions that impact functioning:

(a) Identify how common chronic medical conditions affect physical disability;

(b) Describe how chronic medical conditions influence and impact care for a young individual with a physical disability;

(c) Describe how to support an individual with a physical disability and multiple chronic conditions; and

(d) Describe how to support the individual's dignity while providing personal care.

(4) Regarding the competency on independent living and individual-directed care, support independent living and self-determination for the individual living with a disability:

(a) Define the independent living philosophy and describe what it might look like;

(b) Describe barriers to independent living, including accessibility and attitudes;

(c) Describe ways to support independent living and self-determination with the individual living with a disability;

(d) Describe individual-directed support;

(e) Identify ways to promote individual-directed support; and

(f) Identify resources that promote independence and self-determination for an individual living with a disability.

(5) Regarding the competency of social connections and sexual needs of young adults living with a physical disability, provide optimum support to an individual living with a disability in his or her expression of social and sexual needs:

(a) Describe and explain the importance of full, appropriate, and equal participation of individuals living with a physical disability;

(b) Identify ways to support social connections and activities;

(c) Describe and explain the importance of honoring the individual as a sexual being with diverse sexual needs, desires, and orientation; and

(d) Identify ways to support expression of sexual needs in a respectful, professional, and confidential manner.

To meet these population specific competencies, a curriculum must meet these competencies and learning objectives.

NEW SECTION

WAC 388-112-0088 What topics must training on aging and older adults include? Training on aging and older adults must include all the competencies learning objectives under WAC 388-112-0091 the following core knowledge and skills:

- (1) Introduction to aging;
- (2) Age-associated physical changes;
- (3) Cultural impacts on aging;
- (4) Ageism and supporting individual dignity;
- (5) Supporting individuals living with a chronic condition;
- (6) Dealing with death, grief, and loss; and
- (7) Supporting health and wellness.

NEW SECTION

WAC 388-112-0091 What are the competencies and learning objectives for training on aging and older adults? The competencies define the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training on aging and older adults. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to aging, draw upon a basic understanding of the aging process and demonstrate awareness of the unique needs of older adults:

- (a) Describe basic information on the aging process, including the difference between age-related changes and a disease process;
- (b) List typical changes that occur with aging;
- (c) Identify common stereotypes, biases, myths, and misconceptions regarding aging, ageism, and older adults;
- (d) Describe how ageism, biases, myths, and misconceptions can influence care to older individuals;
- (e) Describe how aging affects the individual's needs and behaviors; and
- (f) Describe the value of adapting caregiving to the age-related concerns of the individual.

(2) Regarding the competency on age-associated physical changes, provide individualized care by understanding physical changes that are experienced in aging:

- (a) Identify common physical changes experienced in the aging process;
- (b) Describe common sensory changes that occur in aging and their impact on an older adult's activities;
- (c) Describe the difference between age-associated physical changes versus a disease process; and
- (d) Describe how age-related physical changes can impact functioning and the ability to perform personal care.

(3) Regarding the competency on cultural impacts of aging, provide culturally compassionate care by utilizing a basic understanding of issues related to culture and aging:

(a) Describe how race/ethnicity, poverty, and class influence the aging process;

(b) Describe how race/ethnicity, poverty, and class influence an older adult's help-seeking behavior; and

(c) Describe a culturally sensitive approach to working with older adults that demonstrates shared decision-making and mutual respect.

(4) Regarding the competency on ageism and supporting individual dignity, overcome ageism and support individual dignity by understanding stereotypes and myths regarding aging:

(a) Describe the concept of "ageism" and its possible impact on working with older adults;

(b) Identify his or her perceptions about aging and how these perceptions may contribute to "ageism";

(c) Describe how "ageism" can influence individual dignity; and

(d) Describe strategies for overcoming "ageism" and supporting individual dignity.

(5) Regarding the competency on supporting individuals living with chronic medical conditions, provide appropriate care by recognizing how chronic conditions impact functioning:

(a) Describe how chronic medical conditions can influence and impact care for older adults;

(b) Describe strategies for working with an older adult with multiple chronic medical conditions;

(c) Describe proactive ways to support an older adult living with chronic medical conditions; and

(d) Describe how to help support the older adult's dignity while providing care.

(6) Regarding the competency on dealing with death, grief and loss, respond appropriately to an individual experiencing loss:

(a) Describe common examples of losses encountered in the aging process;

(b) Describe common reactions to loss of significant roles;

(c) Describe strategies for dealing with loss;

(d) Describe the value of promoting social engagement for the older adult;

(e) Identify strategies and opportunities for promoting social engagement; and

(f) Identify actions and resources that can be used to help an older adult work through feelings of grief and loss.

(7) Regarding the competency on supporting optimum health and wellness, support the optimum health and wellness of older adults:

(a) Identify key factors that support individual health and wellness;

(b) Identify strategies for promoting individual optimum health while aging;

(c) Identify strategies and opportunities to support an older adult to engage in healthy life style choices; and

(d) Describe his or her role in promoting optimum health and wellness for older individuals.

To meet these population specific competencies, a curriculum must meet these competencies and learning objectives.

NEW SECTION

WAC 388-112-0106 Who is required to obtain certification as a home care aide, and when? Unless exempt under WAC 246-980-070, the following must be certified by the department of health as a home care aide within the specified timeframes:

- (1) All long-term care workers, within one hundred and fifty days of hire;
- (2) Adult family home applicants, before licensure; and
- (3) Adult family home entity representatives and resident managers, before assuming the duties of the position.

NEW SECTION

WAC 388-112-0108 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved instructor or approved training entity who has provided all seventy-five hours of training.

(2) An approved instructor or approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates or transcript required documenting two hours of DSHS-approved orientation, three hours of approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. Only a DSHS or training partnership seventy-five hour training certificate can be submitted by a long-term care worker applying to the department of health for a home care aide certification.

(3) For home care aide recertification, successful completion of twelve hours of DSHS-approved continuing education training must be documented on a DSHS certificate issued by an approved instructor or approved training entity who has provided all twelve hours of continuing education training. If all twelve hours of continuing education were not provided by the same instructor or training entity, then an approved instructor or approved training entity must verify that the certified home care aide has certificates or transcripts that add up to twelve hours of DSHS-approved continuing education. Only a DSHS training partnership twelve-hour continuing education certificate can be submitted by a certified home care aide applying to the department of health for recertification.

(4) The long-term care worker and certified home care aide must retain the original seventy-five hour training certificate and any twelve-hour continuing education training certificates. Training entities must keep a copy of the certificates on file.

AMENDATORY SECTION (Amending WSR 06-16-072, filed 7/28/06, effective 8/28/06)

WAC 388-112-0110 What is specialty training? (1) Specialty or "special needs" training((, including caregiver specialty training,)) provides instruction in caregiving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not inter-

changeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must pre-approve specialty training curricula for managers and ((caregivers, except for adult family home care giver specialty training)) long-term care workers.

(2) Manager specialty training is required for boarding home administrators (or designees), adult family home applicants or providers ((and)), resident managers, and entity representatives who are affiliated with homes that serve individuals who have the following special needs:

(a) Developmental disabilities specialty training, under WAC 388-112-0120((, is the required training on that specialty for adult family home providers and resident managers, and for boarding home administrators (or designees,))).

(b) Dementia specialty training, under WAC 388-112-0125, and mental health specialty training, under WAC 388-112-0135((, are the required trainings on those specialties for adult family home providers and resident managers, and for boarding home administrators (or designees))).

(3) ((Caregiver)) Specialty training for long-term care workers in boarding homes, adult family homes, and supported living providers are as follows:

(a) Developmental disabilities specialty training, under WAC 388-112-0120((, is the required training on that specialty for boarding home caregivers)).

(b) ((Caregiver)) Dementia specialty training, under WAC 388-112-0130, and ((caregiver)) mental health specialty training, under WAC 388-112-0140((, are the required trainings on those specialties for boarding home caregivers)).

(4) ((Caregiver specialty training for adult family homes:

The provider or resident manager who has successfully completed the manager specialty training, or a person knowledgeable about the specialty area, trains adult family home caregivers in the specialty needs of the individual residents in the adult family home, and there is no required curriculum)) Specialty training may be used to meet the requirements for the basic training population specific component if completed within one hundred and twenty days of employment.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0115 What specialty training((, including caregiver specialty training,)) is required if a resident has more than one special need? If an individual resident has needs in more than one of the special needs areas, the home must determine which of the specialty trainings will most appropriately address the overall needs of the person and ensure that the specialty training that addresses the overall needs is completed as required. If additional training beyond the specialty training is needed to meet all of the resident's needs, the home must ensure that additional training is completed.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0120 What ((knowledge and skills)) topics must manager and ((caregiver)) long-term care worker developmental disabilities specialty trainings include? (1) Manager developmental disabilities specialty

training and ((caregiver)) long-term care worker developmental disabilities specialty trainings must include all of the ((learning outcomes and competencies published by DSHS)) competencies and learning objectives described under WAC 388-112-0122 for the following ((core knowledge and skills)) topics:

- (a) Overview of developmental disabilities;
- (b) Values of service delivery;
- (c) Effective communication;
- (d) Introduction to interactive planning;
- (e) Understanding behavior;
- (f) Crisis prevention and intervention; and
- (g) Overview of legal issues and individual rights.

(2) For adult family homes, the division of developmental disabilities (DDD) will provide in-home technical assistance to the adult family home upon admission of the first ((resident)) individual eligible for services from DDD and, thereafter, as determined necessary by DSHS.

((3) The manager and caregiver developmental disabilities specialty training learning outcomes and competencies may be obtained from the DSHS division of developmental disabilities.))

NEW SECTION

WAC 388-112-0122 What are the competencies and learning objectives for the departmental disability specialty training? The developmental disabilities specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with individuals. Learning objectives are associated with each competency.

(1) Regarding the competency on an overview of developmental disabilities, draw upon a basic understanding of developmental disabilities and demonstrate awareness of the unique needs of individuals with developmental disabilities:

(a) Define developmental disability and describe intellectual disability, cerebral palsy, epilepsy, and autism;

(b) Identify common myths and misconceptions about developmental disabilities;

(c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and

(d) Differentiate between developmental disabilities and mental disorders.

(2) Regarding the competency on values of service delivery, promote and support an individual's self-determination:

(a) Identify the principle of normalization and its significance to the work of long-term care workers;

(b) Explain how understanding each individual's needs leads to better services and supports, which lead to better outcomes for the individual;

(c) Describe each of the residential services guidelines and identify how the values represented in the guidelines are important in the lives of people with developmental disabilities;

(d) Describe the principle of self-determination; and

(e) Identify positive outcomes for individuals with developmental disabilities when they are connected to the community they live in.

(3) Regarding the competency on communication, provide culturally compassionate and individualized care by utilizing a basic understanding of a resident or individual's history, experience, and cultural beliefs:

- (a) List the key elements of effective communication;
- (b) Describe the impact communication has on the lives of individuals with developmental disabilities;

(c) Explain the impact a long-term care worker's behavior can have on eliciting communication;

(d) Explain the impact of an individual's physical environment on their ability to communicate;

(e) Describe methods of communication, other than verbal, that long-term care workers might use when supporting individuals with developmental disabilities; and

(f) List tips for communication with individuals with developmental disabilities.

(4) Regarding the competency on interactive planning, use person-centered and interactive planning when working with individuals with developmental disabilities:

(a) Identify the benefits of using a person-centered planning process rather than the traditional planning methods used to develop supports for people with developmental disabilities;

(b) Identify key elements involved in interactive planning;

(c) Identify ways to include people with developmental disabilities and their families in the planning process; and

(d) Identify the required planning document for the setting and list ways to have a positive impact on the plan.

(5) Regarding the competency on challenging behaviors, use a problem solving approach and positive support principles when dealing with challenging behaviors:

(a) Identify the essential components of the concept of positive behavioral supports;

(b) Define the "ABCs" and describe how to use that process to discover the function of behavior;

(c) Explain why it is critical to understand the function of behavior before developing a support plan;

(d) Define reinforcement and identify ways to utilize it as a tool to increase an individual's ability to be successful;

(e) Identify the problems with using punishment to manage behavior;

(f) Identify behavior management techniques that are not allowed under DSHS policies and applicable laws;

(g) Identify factors that can positively and negatively influence the behavior of individuals with developmental disabilities; and

(h) List steps to be taken when crisis or danger to people is immediate.

(6) Regarding the competency on crisis prevention, support an individual experiencing a crisis and get assistance when needed:

(a) Identify behaviors in people with developmental disabilities that might constitute "normal stress";

(b) Define "crisis";

(c) Differentiate the behaviors an individual who is in crisis exhibits from mental illness;

(d) Identify the principles of crisis prevention and intervention;

(e) Identify what types of situations require outside assistance and at what point it becomes necessary; and

(f) Name several ways to provide support to an individual experiencing a crisis.

(7) Regarding the competency on legal rights, promote and protect the legal and individual rights of individuals with developmental disabilities:

(a) Explain how the rights of individuals with disabilities compare to those of the general population;

(b) List the rights of individuals living in adult family homes and boarding homes and the laws that support those rights;

(c) Describe how long-term care workers can help individuals to exercise their rights;

(d) List ways a long-term care worker must safeguard each individual's confidentiality;

(e) Describe the three types of guardianship an individual with developmental disabilities might be subject to and why;

(f) List less restrictive alternatives to guardianship;

(g) Describe the responsibilities, powers, and limitations of a guardian; and

(h) Describe the relationship between service providers and guardians/families.

To meet these population specific competencies, a curriculum must meet these competencies and learning objectives.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0125 What knowledge and skills must manager dementia specialty training include? (1) Manager dementia specialty training must include all the learning ((outcomes)) objectives and competencies published by DSHS for the following core knowledge and skills:

(a) Introduction to the dementias;

(b) Differentiating dementia, depression, and delirium;

(c) Caregiving goals, values, attitudes and behaviors;

(d) Caregiving principles and dementia problem solving;

(e) Effects of cognitive losses on communication;

(f) Communicating with people who have dementia;

(g) Sexuality and dementia;

(h) ((Rethinking "problem")) Dealing with challenging behaviors;

(i) Hallucinations and delusions;

(j) Helping with activities of daily living (ADLs);

(k) Drugs and dementia;

(l) Working with families;

(m) Getting help from others; and

(n) Self-care for ((caregivers)) long-term care workers.

(2) The manager dementia specialty training learning ((outcomes)) objectives and competencies may be obtained from the DSHS aging and ((adult)) disability services administration.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0130 What ((knowledge and skills)) topics must ((caregiver)) long-term care worker dementia

specialty training include? (1) ((Caregiver)) Long-term care worker dementia specialty training must include all the ((learning outcomes and competencies published by DSHS)) competencies and learning objectives under WAC 388-112-0132 for the following ((core knowledge and skills)) topics:

(a) Introduction to the dementias;

(b) Dementia, depression, and delirium;

(c) ((Resident based caregiving;

((d))) Dementia caregiving principles;

((e))) (d) Communicating with people who have dementia;

((f))) (e) Sexuality and dementia;

((g))) (f) ((Rethinking "problem")) Dealing with challenging behaviors;

((h))) (g) Hallucinations and delusions;

((i))) (h) Helping with activities of daily living (ADLs); and

((j))) (i) Working with family and friends.

((2) The learning outcomes and competencies for caregiver dementia training may be obtained from the DSHS aging and adult services administration.))

NEW SECTION

WAC 388-112-0132 What are the competencies and learning objectives for the long-term care worker dementia specialty training? The dementia specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with individuals. Learning objectives are associated with each competency.

(1) Regarding the competency on an introduction to dementia, draw upon a basic understanding of dementia and demonstrate awareness of the unique needs of individuals with dementia:

(a) Identify basic information on dementia, including causes and treatments;

(b) Describe how dementia affects individual needs and behaviors;

(c) List typical behaviors and symptoms an individual with dementia would most likely experience;

(d) Describe the differences that might be seen based on the type of dementia an individual has.

(2) Regarding the competency on dementia, depression, and delirium, respond appropriately to individuals who have dementia, delirium, and/or depression:

(a) Identify and differentiate between dementia, depression, and delirium;

(b) Describe common symptoms of dementia, depression, and delirium and list possible causes;

(c) Compare and contrast among common symptoms of dementia, depression, and delirium; and

(d) Identify what symptom changes require immediate professional attention and how to access professional help.

(3) Regarding the competency on dementia caregiving principles, incorporate current best practices when providing dementia care:

(a) Identify current best practices in dementia caregiving;

(b) Describe current best practices in caregiving;

(c) Demonstrate the ability to support the individual's strengths using caregiving techniques to support those strengths; and

(d) Describe how to use cultural and life information to develop and enhance care provided to individuals with dementia.

(4) Regarding the competency on communicating with people who have dementia, communicate in a respectful and appropriate manner with individuals with dementia:

(a) Describe common dementia-caused cognitive losses and how those losses can affect communication;

(b) Identify appropriate and inappropriate nonverbal communication skills and discuss how each impacts an individual's behavior;

(c) Describe how to effectively initiate and conduct a conversation with an individual who has dementia; and

(d) Identify communication strategies to work with individuals who have dementia.

(5) Regarding the competency on sexuality and dementia, protect a resident or individual's rights when dealing with issues of sexuality and appropriately manage unwanted or inappropriate sexual behavior:

(a) Identify ways in which dementia affects sexuality and sexual behaviors;

(b) Identify an individual's rights as they relate to sexuality and sexual behavior and discuss ways to support these rights; and

(c) Describe how to respond using nonjudgmental caregiving skills to individuals' appropriate and inappropriate sexual behaviors.

(6) Regarding the competency on dealing with challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

(a) Describe how to use a problem-solving method to intervene in challenging behaviors or situations;

(b) Describe some possible common causes of challenging behaviors, including aggression, catastrophic reactions, wandering, and inappropriate sexual behavior and explore their causes;

(c) Describe how to implement a problem-solving process when working with an individual who has dementia; and

(d) Describe how to respond appropriately to an individual who is expressing a challenging behavior.

(7) Regarding the competency on hallucinations and delusions, respond appropriately when an individual is experiencing hallucinations or delusions:

(a) Define and differentiate between hallucinations and delusions;

(b) List different types of dementia-related hallucinations; and

(c) Describe how to appropriately and safely respond to an individual with dementia who is experiencing hallucinations and delusions.

(8) Regarding the competency on activities of daily living, make activities of daily living pleasant and meaningful:

(a) Identify and describe ways in which to support making activities of daily living pleasant for individuals with dementia; and

(b) Describe strategies that support meaning and utilize an individualized approach when assisting an individual with dementia with activities of daily living.

(9) Regarding the competency on working with family and friends, respond respectfully, appropriately, and with compassion when interacting with families and friends of individuals or residents with dementia:

(a) Identify common concerns friends and family have when a loved one has dementia;

(b) Describe ways to be supportive and compassionate in interactions with family and friends of the individual with dementia;

(c) Identify how to find local resources for family support needs; and

(d) Describe a method to gather cultural and life history information from an individual and/or representative(s).

To meet these population specific competencies, a curriculum must meet these competencies and learning objectives for dementia specialty training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0135 What knowledge and skills must manager mental health specialty training include? (1) Manager mental health specialty training must include all the learning ((outcomes)) objectives and competencies published by DSHS for the following core knowledge and skills:

(a) Introduction to mental illness;

(b) Culturally compassionate care;

(c) Respectful communications;

(d) Understanding mental illness - major mental disorders;

(e) Understanding mental illness - baseline, decompensation, and relapse planning; responses to hallucinations and delusions;

(f) Understanding and interventions for behaviors perceived as problems;

(g) Aggression;

(h) Suicide;

(i) Medications;

(j) Getting help from others; and

(k) Self-care for ((caregivers)) long-term care workers.

(2) The manager mental health specialty training learning ((outcomes)) objectives and competencies may be obtained from the DSHS aging and ((adult)) disability services administration.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0140 What ((knowledge and skills)) topics must ((caregiver)) the mental health specialty training include? (1) ((Caregiver)) Mental health specialty training must include all the ((learning outcomes and competencies published by DSHS)) competencies under WAC 388-112-0142 for the following ((core knowledge and skills)) topics:

(a) Understanding major mental disorders;

(b) Individual background, experiences and beliefs;

(c) ((Responding to)) Respectful communication;

(d) Creative approaches to challenging behaviors;
(e) Decompensation((;)) and relapse((;)) planning;
(f) Responding to hallucinations and delusions;
((d) Interventions for behaviors perceived as problems;
((e)) (g) Crisis intervention and dealing with aggression;
 and

((f)) (h) Suicide prevention.

((2) The learning outcomes and competencies for care-giver mental health training may be obtained from the DSHS aging and adult services administration.))

NEW SECTION

WAC 388-112-0142 What are the competencies and learning objectives for the long-term care worker mental health specialty training? The mental health specialty competencies describe the behavior and skills a long-term care worker should exhibit when working with individuals. Learning objectives are associated with each competency.

(1) Regarding the competency on understanding major mental disorders, draw upon a basic understanding of mental disorders and demonstrate awareness of the unique needs of individuals with mental disorders:

- (a) Define and describe main symptoms of depression, bipolar schizophrenia, and anxiety disorder, and list treatment options for each;
- (b) Describe causes of mental disorders;
- (c) Describe the progression of mental disorders;
- (d) Identify common myths and misinformation about mental disorders; and
- (e) Define stigma and identify how stigma can impact caregiving.

(2) Regarding the competency on individual background, experiences and beliefs, provide culturally compassionate and individualized care by utilizing a basic understanding of the individual's history, experience, and cultural beliefs:

- (a) Demonstrate a method for gathering cultural, lifestyle, and personal value information from an individual;
- (b) Identify why obtaining cultural information from an individual is important;
- (c) Describe the importance of being sensitive to cultural differences when providing care;
- (d) Differentiate how cultural beliefs and symptoms may be misinterpreted as mental disorders; and
- (e) Identify how the long-term care worker's culture might affect caregiving.

(3) Regarding the competency on communication and mental disorders, communicate respectfully and appropriately with individuals with a mental disorder:

- (a) Identify what is considered respectful and disrespectful communication when interacting with an individual with a mental disorder;
- (b) Identify what is judgmental communication toward an individual with a mental disorder and ways to ensure communication is nonjudgmental;
- (c) Identify examples of verbal and nonverbal communication and describe how each impacts communication; and

(d) Describe how to effectively initiate and conduct a respectful conversation with an individual who has a mental disorder.

(4) Regarding the competency on creative approaches to challenging behaviors, use a problem-solving approach when dealing with challenging behaviors:

- (a) Define and differentiate between inappropriate learned behaviors and symptoms of a mental disorder;
- (b) Identify possible common causes of challenging behaviors in an individual with a mental disorder;
- (c) Differentiate how challenging behaviors may be misinterpreted as mental disorders; and
- (d) Describe intervention strategies that can be used to reduce or prevent challenging behaviors.

(5) Regarding the competency on responding to de-compensation and relapse, respond appropriately when an individual is decompensating to help prevent a relapse:

- (a) Define the terms baseline, de-compensation, and relapse;
- (b) Identify common causes and symptoms of de-compensation and relapse;
- (c) Describe the term "relapse plan" and review an example of a relapse plan; and
- (d) Identify how a long-term care worker can support and use the relapse plan.

(6) Regarding the competency on responding to hallucinations and delusions, respond appropriately to an individual experiencing hallucinations or delusions:

- (a) Define the terms hallucination and delusion;
- (b) Identify common triggers (including stress) of delusions and hallucinations;
- (c) Identify and describe appropriate intervention strategies for an individual experiencing a hallucination or delusion; and

(d) Describe how to accurately document an individual's behavioral symptoms, interventions, and outcomes.

(7) Regarding the competency on crisis intervention and dealing with aggression, intervene early when dealing with aggressive behavior to increase emotional stability and ensure safety:

- (a) Define the term aggression;
- (b) Identify the difference between aggressive behaviors and aggressive feelings;
- (c) List de-escalation "do's" and "don'ts" as they relate to working with an individual expressing aggressive behavior;
- (d) Describe appropriate de-escalation techniques when working with an individual expressing aggressive behavior; and

(e) Differentiate between nonimmediate and immediate danger and at what point additional assistance may be needed.

(8) Regarding the competency on suicide prevention, respond appropriately to an individual at risk of suicide:

- (a) Identify and list signs an individual is possibly suicidal;
- (b) Describe how to respond appropriately to an individual experiencing suicidal thoughts, including:
 - (i) How, where, and when to refer an individual who is experiencing suicidal thoughts and/ or planning; and

(ii) Methods to keep a suicidal individual safe and ensure the safety for others.

(c) Describe strategies to help cope with an individual's suicide.

To meet these population specific competencies, a curriculum must meet these competencies and learning objectives.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0145 Is competency testing required for specialty training((, including caregiver specialty training))? Yes, passing the DSHS competency test, as provided under WAC 388-112-0290 through 388-112-0315 is required for successful completion of specialty training for:

(1) All adult family home applicants or providers ((and)), resident managers, entity representatives, and ((for)) long-term care workers; and

(2) All boarding home administrators (or designees) and ((caregivers, as provided under WAC 388-112-0290 through 388-112-0315. Competency testing is not required for adult family home caregivers)) long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0150 Is there a challenge test for specialty training((, including caregiver specialty training))? A challenge test is a competency test taken without first taking the class or receiving or reviewing the class materials.

There is a challenge test for ((all)) each of the specialty trainings((, including caregiver specialty trainings, except the adult family home caregiver training)). Individuals may take the DSHS challenge test instead of required specialty training. A person who does not pass a challenge test on the first attempt must attend the class.

NEW SECTION

WAC 388-112-0152 Is competency testing required for population specific trainings on younger adults with physical disabilities, aging and older adults, generalized population specific training, and the supported living provider training? No, there is no competency testing required for the population specific trainings on younger adults with physical disabilities, aging and older adults, generalized population specific training, and the supported living provider training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0155 What documentation is required for successful completion of specialty training((, including caregiver specialty training))? Specialty training((, including caregiver specialty training,)) as applicable, must be documented by a certificate or transcript of successful completion of training, issued by the instructor or training entity((,)) that includes:

(1) The trainee's name;

(2) The name of the training;

(3) The name of the home or training entity giving the training;

(4) The number of hours of the training;

(5) The instructor's name and signature; ((and))

((5)) (6) The date(s) of training((,)); and

((6)) (7) The trainee must be given an original certificate. The home must keep a copy of the certificate on file.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0160 Who is required to complete manager specialty training, and when? Adult family homes

(1) Adult family home applicants, providers ((including)), entity representatives ((as defined under chapter 388-76 WAC)) and resident managers must complete manager specialty training and demonstrate competency before ((admitting and serving residents)) the home is licensed or before a new resident manager is hired in order to admit or serve individuals who have special needs related to mental illness, dementia, or a developmental disability.

(2) If ((a resident)) an individual develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete manager specialty training and demonstrate competency.

Boarding homes

(3) If a boarding home serves one or more ((residents)) individuals with special needs, the boarding home administrator (or designee) must complete manager specialty training and demonstrate competency within one hundred twenty days of employment ((or within one hundred twenty days of September 1, 2002, whichever is later)). A boarding home administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ((their facility caregivers)) the facility's long-term care workers in a ((caregiver)) specialty.

(4) If ((a resident)) an individual develops special needs while living in a boarding home, the boarding home administrator (or designee) has one hundred twenty days to complete manager specialty training and demonstrate competency. A boarding home administrator with a current nursing home administrator license is exempt from this requirement, unless the administrator will train ((their facility caregivers)) the facility's long-term care workers in a ((caregiver)) specialty.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0165 Who is required to complete ((caregiver)) long-term care worker specialty training, and when? ((Adult family homes))

((If an adult family home serves one or more residents with special needs, all caregivers must receive training regarding the specialty needs of individual residents in the home. The provider or resident manager knowledgeable about the specialty area may provide this training.))

((Boarding homes))

If a boarding home or adult family home serves one or more ((residents)) individuals with special needs, ((caregivers)) long-term care workers in those settings must complete ((caregiver)) specialty training and demonstrate competency.

(1) If the ((caregiver)) specialty training is integrated with basic training, ((caregivers)) long-term care workers must complete the ((caregiver)) specialty training within one hundred twenty days of ((when they begin providing hands-on personal care to a resident having special needs or within one hundred twenty days of September 1, 2002, whichever is later)) hire.

(2) If the ((caregiver)) specialty training is not integrated with basic training, ((caregivers)) long-term care workers must complete the relevant ((caregiver)) specialty training within ninety days of completing basic training.

(3) Until competency in the ((caregiver)) specialty training has been demonstrated, ((caregivers)) long-term care workers may not provide hands-on personal care to ((a resident)) an individual with special needs without direct supervision in a boarding home or indirect supervision in an adult family home.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0195 Who is required to complete nurse delegation core training, and when? ((Adult family homes))

(1) Before performing any delegated nursing task, long-term care workers in adult family ((home staff)) homes, boarding homes, and supported living programs must:

(a) Successfully complete DSHS-designated nurse delegation core training, "Nurse Delegation for Nursing Assistants";

(b) Be a:

(i) Certified home care aide and a nursing assistant registered; or

(ii) Nursing assistant certified under chapter 18.88A RCW; ((and)) or

(iii) If exempt from the home care aide certification, become a nursing assistant registered and complete the core competencies of basic training.

((e)) If a nursing assistant registered, successfully complete basic training.

Boarding homes

((2) Before performing any delegated nursing task, board- ing home staff must:

(a) Successfully complete DSHS-designated nurse delegation core training;

(b) Be a nursing assistant registered or certified under chapter 18.88A RCW; and

((e)) If a nursing assistant registered, successfully complete basic training.)

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0200 What is continuing education? Continuing education is additional caregiving-related training designed to increase and keep current a person's knowl-

edge and skills. DSHS ((does not)) must preapprove continuing education ((programs or instructors)) curricula and instructions. The same continuing education courses may not be repeated for credit unless it is a new or more advanced training on the same topic.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0205 How many hours of continuing education are required each year? (1) ((Individuals)) Until June 30, 2011, persons subject to a continuing education requirement must complete at least ten hours of continuing education each calendar year (January 1 through December 31) after the year in which they successfully complete basic ((or modified basic)) training. If ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

(2) Effective July 1, 2011, long-term care workers must complete at least twelve hours of continuing education each year after obtaining certification as described in department of health WAC 246-980-110.

(3) If exempt from certification, all long-term care workers must complete twelve hours of continuing education as described in WAC 388-112-0245.

(4) One hour of completed classroom instruction or other form of training (such as a video or on-line course) equals one hour of continuing education.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0210 What kinds of training topics are required for continuing education? Continuing education must be on a topic relevant to the care setting ((and)), care needs of ((residents)) individuals, ((including)) or long-term care career development. Topics may include but are not limited to:

- (1) ((Resident)) Individual rights;
- (2) Personal care ((such as transfers or skin care)) services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive ((resident)) individual behavior support;
- (10) Developing or improving ((resident)) individual-centered activities;
- (11) Dealing with wandering or aggressive ((resident)) individual behaviors;
- (12) Medical conditions; ((and))
- (13) In adult family homes, safe food handling; and
- (14) Nurse delegation core and specialized diabetes.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0220 May basic ((or modified basic)) training be completed a second time and used to meet the continuing education requirement? Retaking basic ((or modified basic)) training may not be used to meet the continuing education requirement.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0225 May specialty training be used to meet continuing education requirements? Manager specialty training and ((caregiver)) long-term care worker specialty training, except any specialty training completed through a challenge test, may be used to meet continuing education requirements.

(1) ((If one or more specialty trainings are completed in the same year as basic or modified basic training, the specialty training hours may be applied toward the continuing education requirement for up to two calendar years following the year of completion of the basic and specialty trainings.))

((2))) If one or more specialty trainings are completed in a different year than the year when basic ((or modified basic)) training was taken, the specialty training hours may be applied toward the continuing education requirement for the calendar year in which the specialty training is taken ((and the following calendar year)).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0230 May nurse delegation core training be used to meet continuing education requirements? Yes, nurse delegation training under WAC 388-112-0175 and 388-112-01961 may be applied toward continuing education requirements for the calendar year in which it is completed.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0235 May residential care administrator training be used to meet continuing education requirements? Yes, residential care administrator training under WAC 388-112-0275 may be used to meet ((ten)) twelve hours of continuing education requirements.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0240 What are the documentation requirements for continuing education? (1) The adult family home ((or)), boarding home, or supported living provider must maintain ((documentation)) certificates or transcripts of continuing education including:

- (a) The trainee's name;
- (b) The title or content of the training;
- (c) The instructor's name, name of the home or training entity giving the training, or the name of the video, on-line

class, professional journal, or equivalent instruction materials completed;

(d) The number of hours of training; and

(e) The date(s) of training.

(2) The trainee must be given an original certificate or other documentation of continuing education.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0245 Who is required to complete continuing education training, and when? Adult family homes

(1) Until June 30, 2011, adult family home providers ((including)), entity representatives ((as defined under chapter 388-76 WAC)), resident managers, and ((caregivers)) long-term care workers must complete ten hours of continuing education each ((calendar)) year ((January 1 through December 31)) after the year in which they ((successfully)) complete basic ((or modified basic)) training. If the ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

((Continuing education must be on a topic relevant to the care setting and care needs of residents in adult family homes)) Effective July 1, 2011, all certified home care aides must complete twelve hours of continuing education each year as described in department of health WAC 246-980-110.

(3) If exempt from certification, all long-term care workers must complete twelve hours of continuing education per calendar year. Continuing education must include 0.5 hours per year on safe food handling in adult family homes.

Boarding homes

(4) Until June 30, 2011, boarding home administrators (or their designees) and ((caregivers)) long-term care workers must complete ten hours of continuing education each ((calendar)) year ((January 1 through December 31)) after the year in which they ((successfully)) complete basic ((or modified basic)) training. If the ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

((Effective July 1, 2011, all certified home care aides must complete twelve hours of continuing education each year as described in department of health WAC 246-980-110.

(6) If exempt from certification, all long-term care workers must complete twelve hours of continuing education per calendar year. A boarding home administrator with a current nursing home administrator license is exempt from this requirement.

Supported living providers

((5)) ((7)) ((Continuing education must be on a topic relevant to the care setting and care needs of residents in boarding homes)) Until June 30, 2011, instruction and support services staff must complete ten hours of continuing education after the year in which they complete basic training. If the ten hours of continuing education were completed between January 1, 2011 and June 30, 2011, then the continuing education requirements have been met for 2011.

(8) Effective July 1, 2011, all instruction and support services staff must complete twelve hours of continuing education each calendar year.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0255 What is first-aid training? First-aid training is training that meets the guidelines established by the Occupational Safety and Health Administration (OSHA) and ((listed)) described at www.osha.gov. Under OSHA guidelines, training must include hands-on skills development through the use of mannequins or trainee partners. Topics include:

(1) General program elements, including:

- (a) Responding to a health emergency;
- (b) Surveying the scene;
- (c) Basic cardiopulmonary resuscitation (CPR);
- (d) Basic first aid intervention;
- (e) Standard precautions;
- (f) First aid supplies; and
- (g) Trainee assessments.

(2) Type of injury training, including:

- (a) Shock;
- (b) Bleeding;
- (c) Poisoning;
- (d) Burns;
- (e) Temperature extremes;
- (f) Musculoskeletal injuries;
- (g) Bites and stings;
- (h) Confined spaces; and

(i) Medical emergencies; including heart attack, stroke, asthma attack, diabetes, seizures, and pregnancy.

(3) Site of injury training, including:

- (a) Head and neck;
- (b) Eye;
- (c) Nose;
- (d) Mouth and teeth;
- (e) Chest;
- (f) Abdomen; and
- (g) Hand, finger and foot.

(4) Successful completion of first aid training, following the OSHA guidelines, also serves as proof of the CPR training.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0260 What are the CPR and first-aid training requirements? Adult family homes

(1) Adult family home applicants, providers, entity representatives, and resident managers must possess a valid CPR and first-aid card or certificate prior to ((providing care for residents)) obtaining a license, and must maintain valid cards or certificates.

(2) Licensed nurses working in adult family homes must possess a valid CPR card or certificate within thirty days of employment and must maintain a valid card or certificate. If the licensed nurse is an adult family home provider or resident manager, the valid CPR card or certificate must be obtained prior to providing care for ((residents)) individuals.

(3) Adult family home ((caregivers)) long-term care workers must obtain and maintain a valid CPR and first-aid card or certificate:

(a) Within thirty days of beginning to provide care for ((residents)) individuals, if the provision of care for residents is directly supervised by a fully qualified ((caregiver)) long-term care worker who has a valid first-aid and CPR card or certificate; or

(b) Before providing care for ((residents)) individuals, if the provision of care for ((residents)) individuals is not directly supervised by a fully qualified ((caregiver)) long-term care worker who has a valid first-aid and CPR card or certificate.

Boarding homes

(4) Boarding home administrators who provide direct care, and ((caregivers)) long-term care workers must possess a valid CPR and first-aid card or certificate within thirty days of employment, and must maintain valid cards or certificates. Licensed nurses working in boarding homes must possess a valid CPR card or certificate within thirty days of employment, and must maintain a valid card or certificate.

Supported living

(5) Applicants must obtain a valid CPR and first-aid card before certification and contract issuance and maintain valid cards or certificates.

(6) Instruction and support services staff must obtain and maintain a valid CPR and first-aid card or certificate:

(a) Within thirty days of beginning to provide care for individuals, as long as the provision of care for individuals is directly supervised by a fully qualified instruction and support services staff who has a valid CPR and first-aid card or certificate; or

(b) Before providing care to individuals, if the provision of care is not directly supervised by a fully qualified instruction and support services staff who has a valid CPR and first-aid card or certificate.

AMENDATORY SECTION (Amending WSR 07-01-045, filed 12/14/06, effective 1/14/07)

WAC 388-112-0270 Who must take the forty-eight hour adult family home residential care administrator training and when? ((Providers licensed prior to December 31, 2006: Before operating more than one adult family home, the provider (including an entity representative as defined under chapter 388-76 WAC) must successfully complete the department approved forty-eight hour residential care administrator training.))

Prospective providers applying for a license after January 1, 2007: Before a license for an adult family home is granted, the prospective provider)) All applicants submitting an application for an adult family home license must successfully complete the department approved forty-eight hour residential care administrator training for adult family homes before a license for an adult family home will be issued.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0290 What is competency testing? Competency testing, including challenge testing, is evaluat-

ing a trainee to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning ((outcomes)) objectives of a particular course.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0295 What components must competency testing include? Competency testing must include the following components:

(1) Skills demonstration of ability to perform and/or implement specific caregiving approaches, and/or activities as appropriate for the training;

(2) Written evaluation to show level of comprehension and knowledge of the learning ((outcomes)) objectives for the training; and

(3) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

(4) Instructors who conduct competency testing must have documented experience or training in assessing competencies.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0300 What training must include the DSHS-developed competency test? ((Basic, modified basic,)) Dementia, mental health and developmental disabilities manager specialty training, ((caregiver)) long-term care worker dementia, mental health and developmental disabilities specialty training, and nurse delegation core and specialized diabetes training must include the DSHS-developed competency test.

AMENDATORY SECTION (Amending WSR 06-01-046, filed 12/15/05, effective 1/15/06)

WAC 388-112-0315 How many times may a competency test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered. ((Licensed adult family providers and employees who fail the food handling section of the basic training competency test a second time, must obtain a valid food worker permit.))

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0320 What trainings must be taught with a curriculum approved by DSHS? (1) The following trainings must be taught using the DSHS curriculum or other curriculum approved by DSHS:

(a) Basic training, both core and population specific;

(b) ((Modified basic;

((e))) Manager mental health, dementia, and developmental disabilities specialty training;

((d))) (c) ((Caregiver)) Long-term care worker mental health, dementia, and developmental disabilities specialty training ((in boarding homes)); and

((e))) (d) Any training that integrates basic training with a ((manager or caregiver)) specialty training.

(2) The residential care administrator training must use a curriculum approved by DSHS.

(3) The developmental disabilities supported living provider training, nurse delegation core and diabetes training must use only the DSHS curriculum.

(4) A curriculum other than the DSHS curriculum must be approved before it is used. ((An attestation that the curriculum meets all requirements under this chapter will be sufficient for initial approval. Final)) Approval will be based on curriculum review, as described under WAC 388-112-0330.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0325 What are the minimum components that ((an alternative)) curriculum must include in order to be approved? ((In order to be approved, an alternative)) Curricula can be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training. When submitting one or both sections of basic training curriculum for DSHS approval, it must at a minimum include:

(1) A completed DSHS curriculum checklist indicating where all the ((DSHS published learning outcomes and)) competencies and learning objectives, described in this chapter are located in the proposed curriculum for ((the)) that course;

(2) ((Printed student)) Any materials ((that support the curriculum, a teacher's guide or manual, and learning resource materials)) students will receive, such as a textbook or student manual, learning activities, audio-visual materials, handouts, and books;

(3) The ((recommended sequence and delivery of the material)) table of contents or outline, including the allotted time for each section;

(4) ((The teaching methods or approaches that will be used for different sections of the course, including for each lesson)) The personal care tasks, as described in WAC 388-112-0055 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves) demonstration skills;

(5) The teacher's guide or manual that includes for each section of the curriculum:

(a) The ((expected learning outcomes)) goals and objectives;

(b) How that section will be taught, including teaching methods and learning activities that incorporate adult learning principles ((and address the learning readiness of the student population));

(c) ((Practice of skills to increase competency;

(d) Feedback to the student on knowledge and skills;

(e) An emphasis on facilitation by the teacher; and

(f) An integration of knowledge and skills from previous lessons to build skills.

~~((5)) Methods instructors will use to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;~~

~~(d) A list of the sources or references, if any, used to develop the curriculum;~~

~~((6)) (e) Methods of teaching and ((student evaluation for students)) how accommodations will be made for long-term care workers with limited English proficiency and/or learning disabilities; and~~

~~((7)) (f) ((A plan for updating material)) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.~~

~~(6) In addition, for curricula being submitted for the core competency section of basic training as described in WAC 388-112-0055, the curriculum must include how much time students will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill. Substantial changes to a previously approved curriculum must be approved before they are used.~~

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0330 What is the curriculum approval process? (1) ~~((An alternative curriculum must be submitted to DSHS for approval with:~~

~~(a) Identification of where each DSHS published required learning outcome and competency is located in the alternate curriculum;~~

~~(b) All materials identified in WAC 388-112-0325; and~~

~~(c) A letter from the boarding home administrator or adult family home provider attesting that the training curriculum addresses all of the training competencies identified by DSHS;~~

~~(2) DSHS may approve a curriculum based upon the attestation in (1)(c) above, until it has been reviewed by DSHS;~~

~~(3) If, upon review by DSHS, the curriculum is not approved, the alternative curriculum may not be used until all required revisions have been submitted and approved by DSHS.~~

~~((4)) After review of the ((alternative)) curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum and if disapproved, the reasons for denial((:)).~~

~~((5)) (2) If the ((alternative)) curriculum is not approved, a revised curriculum may be resubmitted to DSHS for another review. If the reasons why the curriculum is not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and disability services administration (ADSA). The assistant secretary's review decision shall be the final decision of DSHS. No other administrative review is available to the submitter.~~

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0335 What are the requirements for a boarding home ((or))₂ adult family home, or supported living program that wishes to conduct orientation, safety, basic, ((modified basic)) continuing education, manager specialty, ((or caregiver)) long-term care worker specialty training or the developmental disabilities supported living provider training? (1) A boarding home ((or))₂ adult family home, or supported living program wishing to conduct orientation, safety basic, ((modified basic)) continuing education, manager specialty, or ((caregiver)) long-term care worker specialty training ((for boarding home caregivers)) may do so if the home or service provider:

~~(a) Verifies ((and))₂ documents, keeps on file, and makes available to the department upon request that all instructors meet ((each of)) the minimum instructor qualifications in WAC 388-112-0370 through 388-112-0395 for the course they plan to teach;~~

~~(b) Teaches using a complete DSHS-developed or approved ((alternative)) curriculum.~~

~~(c) Notifies DSHS in writing of the home's or service provider's intent to conduct staff training prior to providing the home's first training, and when changing training plans, including:~~

~~(i) Home or service provider name;~~

~~(ii) Name of training(s) the home or service provider will conduct;~~

~~(iii) Name of approved curriculum(s) the home will use;~~

~~(iv) Name of lead instructor and instructor's past employment in boarding homes ((and))₂ adult family homes or supported living programs; and~~

~~(v) Whether the home or service provider will train only the home's or service provider's staff, or will also train staff from other homes or supported living programs. If training staff outside the home or corporation, the instructor must become a DSHS-contracted community instructor;~~

~~(d) Ensures that DSHS competency tests are administered as required under this chapter;~~

~~(e) Provides a certificate or transcript of completion of training to all staff that successfully complete the entire course((, including:~~

~~(i) The trainee's name;~~

~~(ii) The name of the training;~~

~~(iii) The name of the home giving the training;~~

~~(iv) The instructor's name and signature; and~~

~~(v) The date(s) of training));~~

~~(f) Keeps a copy of ((student)) long-term care worker certificates on file for six years, and gives the original certificate to the trainee;~~

~~(g) Keeps attendance records and testing records of ((students)) long-term care workers trained and tested on file for six years; and~~

~~(h) Reports training data to DSHS in DSHS-identified time frames~~

~~((2) ((An adult family home wishing to conduct caregiver specialty training that is taught by the provider, resident manager, or person knowledgeable about the specialty area, as required under WAC 388-112-0110 subsection (3), must document the specialty training as provided under WAC 388-~~

~~112-0155~~) The department may conduct a random audit at any time to review instructor qualifications.

NEW SECTION

WAC 388-112-0337 What is the curriculum approval process for orientation, safety, and continuing education training? (1) Effective January 1, 2011, in order to be approved for any orientation and safety training, submit DSHS form 16-228 and class syllabus at least forty-five days in advance of delivery of the training.

(2) Effective July 1, 2011, in order to be approved for any continuing education training, submit DSHS form 16-228 and class syllabus at least forty-five days in advance of delivery of the training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0340 Do homes need department approval to provide continuing education for their staff? Yes, homes, service providers, or entities may provide continuing education for their staff with~~((or))~~ prior approval of the training curricula~~((or))~~ and instructors by the department.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0345 When can DSHS prohibit a home or service provider from conducting its own training? DSHS may prohibit a home or service provider from providing its own basic, ~~((modified basic,))~~ specialty, or ~~((caregiver specialty))~~ supported living provider training when:

(1) DSHS determines that the training fails to meet the standards under this chapter;

(2) The home or service provider fails to notify DSHS of changes in the curriculum content prior to teaching the curriculum;

(3) The home or service provider provides false or misleading information to long-term care workers or the public concerning the courses offered or conducted;

(4) The home's or service provider's instructor does not meet the applicable qualifications under WAC ~~((388-112-0375))~~ 388-112-0370 through 388-112-0395; or

~~((3))~~ (5) The home's or service provider's instructor has been a licensee, boarding home administrator, or adult family home resident manager, as applicable, of any home subject to temporary management or subject to a revocation or summary suspension of the home's license, a stop placement of admissions order, a condition on the license related to ~~((resident))~~ individual care, or a civil fine of five thousand dollars or more, while the instructor was the licensee, administrator, or resident manager; or

~~((4))~~ (6) The home has been operated under temporary management or has been subject to a revocation or suspension of the home license, a stop placement of admissions order, a condition on the license related to ~~((resident))~~ individual care, or a civil fine of five thousand dollars or more, within the previous ~~((twelve))~~ eighteen months.

~~((5))~~ (7) Nothing in this section shall be construed to limit DSHS' authority under chapters 388-76 ~~((or))~~, 388-78A₂ or 388-101 WAC to require the immediate enforcement, pending any appeal, of a condition on the home license prohibiting the home or service provider from conducting its own training programs.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0350 What trainings must be taught by an instructor who meets the applicable minimum qualifications under this chapter? (1) The following trainings must be taught by an instructor who meets the applicable minimum qualifications for that training: Orientation, safety training, basic training~~((; modified basic training;))~~ core competencies, younger adults with physical disabilities, aging and older adults, residential care administrator training, manager and long-term care worker mental health, dementia, ~~((and))~~ developmental disability specialty training~~((; and caregiver specialty training that is not taught by the boarding home administrator (or designee) or adult family home provider or resident manager))~~, and continuing education.

(2) Nurse delegation core and specialized diabetes training ~~((and residential care administrator training))~~ must be taught by ~~((an))~~ a current Washington state RN instructor who is approved by DSHS.

NEW SECTION

WAC 388-112-0352 What trainings may be taught by an instructor that does not meet the minimum qualifications under this chapter? The following trainings may be taught by an instructor that does not meet the minimum qualifications under this chapter:

- (1) CPR; and
- (2) First aid training.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0355 What are an instructor's or training entity's responsibilities? The instructor or training entity is responsible for:

- (1) Coordinating and teaching classes,
- (2) Assuring that the curriculum used is taught as designed,
- (3) Selecting qualified guest speakers where applicable,
- (4) Administering or overseeing the administration of DSHS competency and challenge tests,
- (5) Maintaining training records including ~~((student))~~ long-term care worker tests and attendance records for a minimum of six years,
- (6) Reporting training data to DSHS in DSHS-identified time frames, and
- (7) Issuing or reissuing training certificates to ~~((students))~~ long-term care workers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0360 Must instructors be approved by DSHS? (1) DSHS-contracted instructors:

(a) DSHS must approve ((any)) and/or contract with an instructor ((under contract with DSHS)) to conduct orientation, safety, basic, ((modified basic,)) residential care administrator, specialty, ((or)) nurse delegation core and specialized diabetes training ((classes using the training curricula developed by DSHS)), and continuing education.

(b) DSHS may select contracted instructors ((through a purchased services contract procurement pursuant to chapter 236-48 WAC or through other)) using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through ((a request for qualifications and quotations (RFQQ) or other applicable)) the contracting procedure.

(2) Homes or service providers conducting their own training

((Homes conducting their own training programs)) using the training curricula developed by DSHS or ((alternative)) another curricula approved by DSHS must ensure that their instructors meet the minimum qualifications for instructors under this chapter.

(3) ((Other instructors))

DSHS must approve all other instructors not described in subsection (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0365 Can DSHS deny or terminate a contract with an instructor or training entity? (1) DSHS may ((determine not to accept a bid or other offer by)) deny a person or organization seeking a contract with DSHS to conduct orientation, safety, basic, ((modified basic,)) residential care administrator, specialty, or nurse delegation core or specialized diabetes training ((classes using the training curricula developed by DSHS. The protest procedures under chapter 236-48 WAC, as applicable, are a bidder's exclusive administrative remedy)). No administrative remedies are available to dispute DSHS' decision not to ((accept an offer that is not governed by chapter 236-48 WAC)) contract, except as may be provided through the contracting process.

(2) DSHS may terminate ((any)) an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies shall be limited to those specified in the contract.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker for basic and developmental disabilities specialty training? (1) A guest speaker((s for basic and developmental disabilities specialty training)) is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) May only teach a specific subject in which they have expertise, ((under the supervision of the instructor. A guest speaker must have as minimum qualifications, an appropriate)) and background and experience that demonstrates that the guest speaker has expertise on the topic he or she will teach.

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must select guest speakers that meet the minimum qualifications((, and));

(b) Maintain documentation of ((this)) the guest speaker's background and qualifications;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for insuring the required content is taught.

(3) DSHS does not approve guest speakers.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0380 What are the minimum qualifications for ((an instructor for basic or modified basic)) an instructor for orientation, safety, basic, residential care administrator, and nurse delegation core and specialized diabetes training, and continuing education? An instructor for orientation, safety, basic ((or modified basic)), residential care administrator, nurse delegation core and specialized diabetes training, and continuing education must meet the following minimum qualifications ((in addition to the general instructor qualifications in WAC 388-112-0375)):

(1) Twenty-one years of age; and

(2) Has not had a professional health care, adult family home, boarding home, or social services license or certification revoked in Washington state.

(3) Education and work experience:

(a) Upon initial approval or hire, must ((have));

(i) Be a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; or

(ii) Have an associate degree in a health field and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-101 WAC, or home care setting; or

(iii) Have a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter ((388-820)) 388-101 WAC, or home care setting((, or

(ii) An associate degree in a health field and six months professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting)).

((2)) (4) Teaching experience:

(a) Must have one hundred hours of experience teaching adults on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and attend a class in adult education that meets the requirements of WAC 388-112-0400.

((3)) (5) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to the course content or units being taught;

((4)) (6) Instructors who will administer tests must have experience or training in assessment and competency testing; and

((5)) (7) If required under WAC ((388-112-0075 or 388-112-0105)) 388-112-0080, instructors must successfully complete basic ((or modified basic)) training prior to beginning to train others.

(8) In addition, an instructor for nurse delegation core and diabetes training must have a current Washington state RN license in good standing without practice restrictions.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)**WAC 388-112-0385 What are the minimum qualifications for instructors for manager and ((caregiver)) long-term care worker mental health specialty training?**

(1) Instructors for manager mental health specialty training: The minimum qualifications for instructors for manager mental health specialty, in addition to the general qualifications in WAC ((388-112-0375)) 388-112-0380 include:

(a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or in college classes, in subjects directly related to mental health, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or one hundred ninety-two hours of seminars, conferences, and continuing education.)

(ii) If required under WAC 388-112-0160, successful completion of the mental health specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have a mental illness; and

(d) Teaching experience

(i) Two hundred hours experience teaching mental health or closely related subjects; and

(ii) Successful completion of an adult education class ((or train the trainer as follows:)).

(A) ((For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400, or a train the trainer class for the curriculum they are teaching;

(B)) For instructors teaching ((DSHS-developed)) mental health specialty training, successful completion of the

DSHS((developed train the trainer)) instructor qualification/demonstration process.

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for ((caregiver)) mental health specialty training:

(a) ((Caregiver)) Mental health specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager mental health specialty training. A qualified instructor under this subsection may teach ((caregiver)) specialty to ((caregivers)) long-term care workers employed at other home(s) licensed by the same licensee.

(b) ((Caregiver)) Mental health specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager mental health specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)**WAC 388-112-0390 What are the minimum qualifications for instructors for manager and ((caregiver)) long-term care worker dementia specialty?** (1) The minimum qualifications for instructors for manager dementia specialty, in addition to the general qualifications under WAC ((388-112-0375)) 388-112-0380, include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology. (One year of education equals twenty-four semester hours, thirty-six quarter hours, or at least one hundred ninety-two hours of seminars, conferences, or continuing education.)

(ii) If required under WAC 388-112-0160, successful completion of the dementia specialty training, prior to beginning to train others.

(c) Work experience - Two years full-time equivalent direct work experience with people who have dementia; and

(d) Teaching experience

(i) Two hundred hours experience teaching dementia or closely related subjects; and

(ii) Successful completion of an adult education class or train the trainer as follows:

(A) For instructors teaching alternate curricula, a class in adult education that meets the requirements of WAC 388-112-0400, or a train the trainer class for the curriculum they are teaching;

(B) For instructors teaching DSHS-developed dementia specialty training, successful completion of the DSHS((developed train the trainer)) instructor qualification approval process.

(d) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Instructors for ((~~caregiver~~)) long-term care worker dementia specialty training:

(a) ((~~Caregiver~~)) Long-term care worker dementia specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager dementia specialty training. A qualified instructor under this subsection may teach ((~~caregiver~~)) specialty to ((~~caregivers~~)) long-term care workers employed at other home(s) licensed by the same licensee.

(b) ((~~Caregiver~~)) Long-term care worker dementia specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager dementia specialty in subsection (1).

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0395 What are the minimum qualifications for instructors for manager and ((~~caregiver~~)) long-term care worker developmental disabilities specialty? (1) The minimum qualifications for instructors for manager developmental disabilities specialty, in addition to the general qualifications under WAC ((388-112-0375)) 388-112-0380, include:

(a) Education and work experience:

(i) Bachelor's degree with at least two years of full-time work experience in the field of disabilities; or

(ii) High school diploma or equivalent, with four years full time work experience in the field of developmental disabilities, including two years full time direct work experience with people who have a developmental disability.

(b) Successful completion of developmental disabilities specialty training under WAC 388-112-0120; and

(c) Teaching experience:

(i) Two hundred hours of teaching experience; and

(ii) Successful completion of adult education or train the trainer as follows:

(A) ((~~For instructors teaching alternative curricula~~)) A class in adult education that meets the requirements of WAC 388-112-0400, or a train the trainer class for the curriculum they are teaching;

(B) For instructors teaching DSHS-developed developmental disabilities specialty training, successful completion of the DSHS-developed train the trainer.

(d) Instructors who will administer tests must have experience in assessment and competency testing.

(2) Instructors for ((~~caregiver~~)) long-term care worker developmental disabilities specialty training:

(a) ((~~Caregiver~~)) Long-term care worker developmental disabilities specialty may be taught by a boarding home administrator (or designee), adult family home provider, or corporate trainer, who has successfully completed the manager developmental disabilities specialty training. A qualified instructor under this subsection may teach ((~~caregiver~~)) developmental disabilities specialty to ((~~caregivers~~)) long-term care workers employed at other home(s) licensed by the same licensee.

(b) ((~~Caregiver~~)) Long-term care worker developmental disabilities specialty taught by a person who does not meet the requirements in subsection (2)(a) must meet the same requirements as the instructors for manager developmental disabilities specialty in subsection (1).

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0405 What physical resources are required for ((~~basic, modified basic, specialty, or nurse delegation core~~)) classroom training and testing? (1) Classroom ((~~space used for basic, modified basic, specialty, or nurse delegation core classroom training~~)) facilities must be accessible to trainees and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. Appropriate supplies and equipment must be provided for teaching and practice of caregiving skills in the class being taught.

(2) Testing sites must provide adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. Appropriate supplies and equipment necessary for the particular test must be provided.

AMENDATORY SECTION (Amending WSR 02-15-066, filed 7/11/02, effective 8/11/02)

WAC 388-112-0410 What standard training practices must be maintained for ((~~basic, modified basic, specialty, or nurse delegation core~~)) classroom training and testing? The following training standards must be maintained for ((~~basic, modified basic, specialty or nurse delegation core~~)) classroom training and testing:

(1) Training, including all breaks, must not exceed eight hours within one day;

(2) Training provided in short time segments must include an entire unit, skill or concept;

(3) Training must include regular breaks; and

(4) ((~~Students~~)) Long-term care workers attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-112-0025

Is competency testing required for orientation?

WAC 388-112-0030

Is there a challenge test for orientation?

WAC 388-112-0050

Is there an alternative to the basic training for some health care workers?

WAC 388-112-0060

Is competency testing required for basic training?

WAC 388-112-0065	Is there a challenge test for basic training?
WAC 388-112-0080	What is modified basic training?
WAC 388-112-0085	What knowledge and skills must be included in modified basic training?
WAC 388-112-0090	Is competency testing required for modified basic training?
WAC 388-112-0095	Is there a challenge test for modified basic training?
WAC 388-112-0100	What documentation is required for successful completion of modified basic training?
WAC 388-112-0105	Who may take modified basic training instead of the full basic training?
WAC 388-112-02610	What is HIV/AIDS training?
WAC 388-112-02615	Is competency testing required for HIV/AIDS training?
WAC 388-112-02620	Is there a challenge test for HIV/AIDS training?
WAC 388-112-02625	What documentation is required for completion of HIV/AIDS training?
WAC 388-112-02630	Who is required to complete HIV/AIDS training, and when?
WAC 388-112-0340	Do homes need department approval to provide continuing education for their staff?
WAC 388-112-0375	What are the minimum general qualifications for an instructor teaching a DSHS curriculum or DSHS-approved alternate curriculum as defined under chapter 388-112 WAC?

AMENDATORY SECTION (Amending WSR 07-16-101, filed 7/31/07, effective 9/1/07)

WAC 388-829A-050 Who is eligible to contract with DDD to provide alternative living services? Before DDD may issue an alternative living contract, the prospective provider must:

- (1) Be twenty-one years of age or older;
- (2) Have a high school diploma or GED;
- (3) Clear a background check conducted by DSHS, as required by RCW 43.20A.710;

(4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;

(5) Have a business ID number, as an independent contractor; and

(6) Meet the minimum skills and abilities described in WAC 388-829A-110.

(7) Alternative living providers contracted after January 1, 2012 must be screened through a fingerprint-based FBI check as described in WAC 388-06-0110 through 388-06-0150.

NEW SECTION

WAC 388-829A-161 What are the training requirements for alternative living providers contracted before January 1, 2011? Alternative living providers contracted before January 1, 2011 must meet the training requirements as described under WAC 388-829A-140 through 388-829A-160.

NEW SECTION

WAC 388-829A-162 What are the training requirements for alternative living providers contracted on or after January 1, 2011? Alternative living providers contracted on or after January 1, 2011 must meet the training requirements as described under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-040 Who is eligible to contract with DDD to provide companion home residential services? To be eligible to contract with DDD to provide companion home residential services, a person must:

- (1) Be twenty-one years of age or older;
- (2) Have a high school diploma or GED;
- (3) Clear a background check conducted by DSHS as required by RCW 43.20A.710;

(4) Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years;

(5) Have a business ID number, as an independent contractor; and

(6) Meet the minimum skills and abilities described in WAC 388-829C-080.

(7) Companion home providers contracted after January 1, 2012 must be screened through a fingerprint-based FBI background check as described in WAC 388-06-0110 through 388-06-0150.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-829C-131 What are the training requirements companion home providers contracted before January 1, 2011? Companion home providers must ensure that

staff hired before January 1, 2011 meet the training requirements as described under chapter 388-829C WAC.

NEW SECTION

WAC 388-829C-132 What are the training requirements companion home providers contracted on or after January 1, 2011? Companion home providers must ensure that staff hired on or after January 1, 2011 meet training requirements as described under chapter 388-112 WAC.

WSR 10-11-005

PROPOSED RULES

SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed May 6, 2010, 1:58 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article IX, Section 9.02—Definitions, SRCAA Regulation I, Article IX, Section 9.03—Asbestos Survey Requirements, SRCAA Regulation I, Article IX, Section 9.04—Notification Requirements, SRCAA Regulation I, Article IX, Section 9.06—Procedures for Asbestos Projects, SRCAA Regulation I, Article IX, Section 9.08—Alternate Means of Compliance, SRCAA Regulation I, Article IX, Section 9.09—Disposal of Asbestos-Containing Waste Material, and SRCAA Regulation I, Article X, Section 10.09—Asbestos Project and Demolition Notification Waiting Period and Fees.

Hearing Location(s): Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, on August 5, 2010, at 9:30 a.m.

Date of Intended Adoption: August 5, 2010.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by 4:30 p.m. on July 6, 2010.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on July 30, 2010, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify that asbestos surveys need to identify the location of asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project; clarify that a copy of the asbestos survey must be provided to Spokane regional clean air agency (SRCAA), if requested; remove reference to faxed notifications and corresponding prepayment accounts since owners and contractors can file notifications on-line and pay with a credit card; clarify that the fee waiver for demolition by structural fire training also applies when the notification lists both asbestos removal and demolition; add a provision which allows owners or contractors to file annual notifications; add a provision which allows notifications to be amended after the asbestos removal completion date on record; revise the regulation so that one person doesn't have to have multiple credentials to prepare an alter-

nate work plan when standard asbestos removal methods can't be used; when extenuating circumstances exist, allow the agency to accept emergency notifications one working day after the emergency work commenced; change "shall" to "may" regarding the board amending the fee schedule to more accurately recover program costs; and include an additional incremental fee for incrementally larger abatement projects. The anticipated effect is industry-wide uniformity in how asbestos is identified, removed, and disposed of.

Reasons Supporting Proposal: Asbestos is a known human carcinogen. The goal is to prevent and minimize asbestos fiber release in order to protect public health.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: SRCAA is responsible for implementing federal laws regarding the renovation and demolition of buildings that may contain asbestos. Because there is no known safe level of exposure to asbestos and because each exposure to asbestos increases a person's risk of acquiring asbestos related diseases, SRCAA administers an asbestos program under Regulation I, Article IX and Section 10.09 as a reasonable approach to controlling asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition activities.

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1); RCW 34.05.328 does not apply to this rule.

May 6, 2010

Matt Holmquist
Compliance Administrator

AMENDATORY SECTION

SECTION 9.02 DEFINITIONS

A. **AHERA Building Inspector** means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. **AHERA Project Designer** means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. Asbestos means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. Asbestos-Containing Material means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA. It includes any material presumed to be asbestos-containing.

E. Asbestos-Containing Waste Material means any waste that contains or is contaminated with asbestos-containing material, except for nonfriable asbestos-containing roofing that remains nonfriable. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable.

G. Asbestos Survey means a written report resulting from a thorough inspection performed pursuant to Section 9.03 of this Regulation.

H. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

I. Contiguous means touching or adjoining.

J. Component means any equipment, pipe, structural member, or other item or material.

K. Controlled Area means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

L. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. Pursuant to the EPA asbestos National Emission Standards for

Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, it includes wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations and includes moving a facility.

M. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

N. Facility means an institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation or building containing condominiums, or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; or any active or inactive waste disposal site. The term includes any structure, installation or building that was previously subject to the Asbestos NESHAP, regardless of its current function, apartments which are an integral part of a commercial facility, and mobile structures used for non-residential purposes. It also includes homes that are demolished or renovated to build non-residential structures (e.g., homes demolished for highway construction projects).

O. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal).

Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper, and cement asbestos products.

P. Leak-Tight Container means a dust-tight and liquid tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

Q. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

R. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material;

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

S. Owner-Occupied, Single-Family Residence means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g., utility bills). This term includes houses, mobile homes, trailers, detached garages, outbuildings, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property, multiple unit buildings (e.g., duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g., a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises (Regulation I, Article VI, Section 6.01 and 40 CFR Part 61, Subpart M).

T. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

U. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

V. Renovation means altering a structure or component in any way, other than demolition.

W. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations (, equipment, and other parts and miscellaneous components)). This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

X. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing material on structural members, or other material on surfaces for decorative purposes.

Y. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g., as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993).

Z. Thermal System Insulation means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AA. Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

BB. Wallboard System means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A ((W))wallboard system((s)) where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

CC. Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

DD. Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the Agency.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

A. Except as provided for in Section 9.03.F of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 CFR 763.86 or an alternate asbestos survey method pursuant to Section 9.03.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a suspect asbestos-containing material does not contain asbestos. Per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86, the required number of bulk asbestos samples must be collected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.

3. Bulk samples must be analyzed for asbestos pursuant to Section 9.02.D of this Regulation by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA Regulation 40 CFR Part 763.85, asbestos surveys shall contain, at a minimum, all of the following information:

1. General Information.

- a. Date that the inspection was performed;
- b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;
- c. Site address(es)/location(s) where the inspection was performed;
- d. Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);
- e. The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;
- f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);
- g. Identify all suspect-asbestos containing materials and their locations, except where limitations of the asbestos survey identified in Section 9.03.C.1.f (above) prevented such identification;
- h. Identify materials presumed to be asbestos-containing material;
- i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other description);
- j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

1) Laboratory name, address and NVLAP certification number;

2) Bulk sample numbers;

3) Bulk sample descriptions;

4) Bulk sample results showing asbestos content; and

5) Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g., schematic and/or other detailed description); and

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet).

D. Asbestos Survey Posting.

Except as provided for in Section 9.03.F of this Regulation, a complete copy of an asbestos survey shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. If an AHERA Building Inspector determines there are no suspect asbestos-containing materials in the work area, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site.

E. Asbestos Survey Retention.

The property owner, ((or)) owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), shall retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and provide a copy ((make it available)) to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-((asbestos)) containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, ((or)) owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall provide a copy ((make it available)) to the Agency upon request. Except for Section 9.03.A-E, all other requirements of this Regulation remain in effect.

3. Alternate Asbestos Survey

A written alternate asbestos survey method shall be prepared and used on occasions when conventional sampling methods required in EPA regulations 40 CFR 763.86 can not be exclusively performed (all other asbestos survey requirements in Section 9.03 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof, rubble or debris piles, and ash or soil, because they are not structures with intact materials and identifiable homogeneous areas. Alternate asbestos survey methodology may be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. How-

ever, pursuant to Section 9.04.A.6 of this Regulation, the project fee in Section 10.09 is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

An asbestos survey is not required prior to renovation or demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the renovation or demolition of an underground storage tank, work shall cease until it is determined pursuant to Section 9.03.B and C of this Regulation whether or not the suspect asbestos-containing material is asbestos-containing material. All other requirements of this Regulation remain in effect.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 9.04 NOTIFICATION REQUIREMENTS

A. General Requirements.

Except as provided for in Section 9.04.A.6.c, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. Unless otherwise approved by SRCAA, ((¶))the notification must be submitted by the property owner or owner's agent on approved forms through the Agency's website or((,)) submitted at the Agency's place of business in person or via U.S. mail.((, or for those contractors using the Agency's prepayment account, notifications may be submitted via facsimile. Prepayment accounts will no longer be offered and notifications submitted via facsimile will no longer be accepted once the Agency begins accepting notifications via its website.))

1. When the Notification Waiting Period Begins

The notification waiting period shall begin on the work-day a complete notification is received by the Agency and shall end after the notification waiting period in Section 10.09 has passed (e.g., The notification waiting period for a notification submitted after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the Agency. A 10-day notification period means work on an asbestos project or demolition can begin on day 11.). A notification is considered complete when all information requested on the notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period shall not begin for incomplete notifications (e.g., unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos are unknown, etc.).

2. Project Duration

The duration of an asbestos project shall be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g., asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner) provided scheduling limitations can be provided in writing to the Control Officer or his/her authorized representative upon request.

3. Multiple Asbestos Projects or Demolitions.

Notification for 5 or fewer structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to asbestos projects or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g., alley or roadway).

b. The work will be performed by the same abatement and/or demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g., at a large commercial facility with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material associated with each structure and indicates which structures will be demolished.

4. Notification Expiration.

Notifications are valid for no more than 365 days from the earliest original notification start date. A new notification shall be submitted to the Agency for work to be performed beginning or continuing more than 365 days from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of this Regulation.

5. Record Keeping.

a. A copy or printout of the notification, all amendments to the notification, and the complete asbestos survey shall be made available for inspection at all times at the asbestos project or demolition site.

b. The property owner ((or)) and owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Agency upon request.

6. Notification Exceptions.

a. Asbestos Project Thresholds.

Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project (per structure, per calendar year).

b. Nonfriable Asbestos-Containing Materials: Caulking, Window-Glazing, Roofing.

Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulk, window-glazing, or roofing (roofing used on roofs versus other applications). All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

c. Owner-Occupied, Single-Family Residences.

For an asbestos project involving an owner-occupied, single-family residence performed by someone other than the resident owner (e.g., an asbestos removal contractor), it shall be the responsibility of the person performing the asbestos project to submit a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. The notification must be submitted by the owner's agent on approved forms. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

d. Underground Storage Tanks.

Notification is not required for demolition of underground storage tanks with no asbestos. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

e. Demolition of Structures With a Projected Roof Area \leq 120 Square Feet.

Notification is not required for demolition of structures with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article IX.

f. Demolition by Fire Fighting Instruction Fires.

The ((project)) notification fee in Section 10.09 is waived for any demolition (when the notification project type is for asbestos removal and demolition or the notification project type is demolition with no asbestos removal) performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

g. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification period and project fee, by written authorization, for disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other requirements remain in effect.

h. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately because of any of the following:

1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

4) The project must proceed to avoid imposing an unreasonable financial burden.

i. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authoriza-

tion. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extend the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

j. Annual Notification.

A property owner or owner's agent may file one or more annual notifications if all of the following conditions are met:

1) If more than one annual notification is filed for the same real property, there must not be duplication of structures listed on the annual notifications.

2) The total amount of asbestos-containing material for all asbestos projects performed under an annual notification is less than or equal to 259 linear feet and less than or equal to 159 square feet per structure, per calendar year. If any quantity of asbestos-containing material is removed from a structure which is below notification thresholds of 10 linear feet and/or 48 square feet per structure per calendar year, and an annual notification is filed after the removal occurred, the quantity of asbestos-containing material removed from each structure must be applied towards the annual notification removal limits for each structure.

3) The annual notification is valid for one calendar year.

4) The annual notification is exempt from the requirements in Sections 9.04.A.2, 9.04.A.3.b, 9.04.A.3.d, and 9.04.A.4. All other requirements apply.

5) Quarterly reporting forms approved by SRCAA shall be completed and received by SRCAA for the first calendar quarter by April 15, for the second calendar quarter by July 15, for the third calendar quarter by October 15, and for the fourth calendar quarter by January 15. Quarterly reports shall be filed with SRCAA even when no asbestos-containing material is removed for the respective reporting period.

B. Amendments.

1. Mandatory Amendments.

Amendments must be submitted by the person or party that originally submitted the notification unless that person or party explicitly names another person or party that is authorized to file an amendment ((to the original notification or most recent amendment filed with the Agency)). An amendment shall be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with the advance notification requirements in Section 10.09 of this Regulation ((e.g., In order to change the asbestos project start date or place a project "on hold", an amendment must be submitted prior to the asbestos project start date listed on the original notification or, if applicable, prior to the start date submitted on the most recent notification amendment on file with the Agency))) and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of this Regulation:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition) or cancellation of a project filed under a notification.

b. Job Size.

Increases in the job size category, which increase the fee or changes the advance notification period. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and

the fee associated with the increased project type or job size category shall be submitted.

c. Type of Asbestos.

Changes in the type of asbestos-containing material that will be removed.

d. Start Date.

Changes in the asbestos project start date or earliest demolition start date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new start date has not been confirmed) or canceling a notification altogether.

e. Completion Date.

Changes in the asbestos project completion date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new end date has not been confirmed).

2. Opportunity for Amendment.

a. Start Date on Record.

An amendment must be submitted on or before the most current asbestos removal start date on record in order to change the asbestos removal start date or place a project "on hold".

((a)) b. Last Completion Date on Record.

In no case shall an amendment be accepted by the Agency if it is filed after the last completion date on record. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos ((project)) removal completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original notification start date.

1) In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of Article X of this Regulation.

2) Where the notification project type indicates asbestos removal and demolition, the last asbestos removal completion date on record has already passed, and when asbestos-containing materials are encountered prior to or during demolition that were not identified in the asbestos survey, SRCAA may accept an amendment for additional asbestos removal, provided the additional asbestos removal is complete within 365 days from the earliest original notification start date.

((b))) c. Canceled Notification.

Once a property owner or owner's agent cancels a notification, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a new, complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms through the Agency's website or in person at the Agency's place of business by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 9.04.A and 10.09 of this Regulation).

((e)) d. Adding Structures or Changing Project Sites.

Amendments may not be used to add structures to a previously submitted notification if the structure(s) meet(s) the definition of a facility in Section 9.02.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 9.06 PROCEDURES FOR ASBESTOS PROJECTS

A. Training Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Asbestos Project Work Practices.

Except as provided in Sections 9.08.A-C of this Regulation, it shall be unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material exposed during removal shall be immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal shall be immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

b. All asbestos-containing waste material resulting from an asbestos project shall be sealed in leak-tight containers as soon as possible after removal, but no later than the end of each work shift.

c. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

d. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

e. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

f. Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material.

6. Visible Emissions

No visible emissions shall result from an asbestos project.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION**SECTION 9.08 ALTERNATE MEANS OF COMPLIANCE**

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Demolition.

Where standard asbestos project work practices in Section 9.06.B can not be utilized to remove asbestos-containing material (financial considerations aside) prior to demolition, when demolition has already occurred, or a similar situation exists (typically leaving a pile/area of debris, rubble, ash, and/or soil), an alternate asbestos removal method may be employed provided it complies with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer ((~~who is also~~)) and a Certified Industrial Hygienist (CIH) or an AHERA Project Designer ((~~who is also~~)) and a Licensed Professional Engi-

neer (PE) must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 9.06.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

a. Reason(s) why standard work practices can not be utilized;

b. Date(s) the work area was evaluated by the ((AHERA Project Designer)) person(s) that prepared the AWP;

c. Site address(es)/location(s) where the inspection was performed;

d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);

e. If an asbestos survey was performed, incorporate it by reference;

f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;

h. A statement that ((The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in)) the AWP will be as effective as the work practices in Section 9.06.B; ((and))

i. Signature(s) of the ((AHERA Project Designer)) person(s) that prepared the AWP((, and ((AHERA Project Designer certification number, and date certification expires.)))

j. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 9.03 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). Unless alternate procedures are specified in the AWP by an AHERA Project Designer ((~~who is also~~)) and a Certified Industrial Hygienist or an AHERA Project Designer ((~~who is also~~)) and a Licensed Professional Engineer, the AWP shall include all of the following requirements in Section 9.08.A.4.a-f of this Regulation:

a. Controlled Area.

The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. The controlled area shall protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris shall be handled in a wet condition.

1) Absorbent materials shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately.

2) Nonabsorbent materials shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately.

c. Asbestos-Containing Waste Materials.

1) All asbestos-containing waste material and/or asbestos contaminated waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

2) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

3) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

4) Leak-tight containers shall be kept leak-tight.

5) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that shall be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

1) The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer (((~~who is also~~)) and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

2) The Agency shall immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work shall stop until an AHERA Project Designer (((~~who is also~~)) and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer) has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

1) A competent person shall be present for the duration of the asbestos project (includes demolition) and shall observe work activities at the site.

2) The competent person shall stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

3) The competent person shall stop work if AWP procedures are not be followed and shall ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures shall be included in the AWP. In addition to these procedures, the following requirements apply:

1) The AWP shall identify what materials will be separated from the asbestos-containing material waste stream and shall describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream shall be free of asbestos-containing material.

2) A competent person shall ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

a. The AWP shall be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP shall retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project shall also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and made available to the Agency upon request. The person(s) preparing and performing such tests shall also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

7. Other Requirements.

All applicable local, state, and federal regulations must be complied with.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.

Nonfriable asbestos-containing roofing material as defined in Section 9.02 of this Regulation may be left in place during demolition, except for demolition by burning, if all of the following are met:

1. A signed and dated written determination was made by an AHERA Project Designer that includes all of the following:

- a. A summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;
- b. A summary of the work practices and engineering controls that will be used;
- c. A determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and
- d. The property owner or owner's agent and the AHERA Project Designer that performed the determination shall retain a complete copy of the determination for at least 24 months from the date it was performed and make it available to the Agency upon request.

2. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with applicable local, state, and federal regulations.

C. Exception for Hazardous Conditions (Leaving Friable and/or Nonfriable Asbestos-Containing Material in Place During Demolition).

Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. At a minimum, the owner and owner's agent must comply with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer ((who is also)) and a Certified Industrial Hygienist or an AHERA Project Designer ((who is also)) and a Licensed Professional Engineer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an Alternative Work Plan (AWP) that ensures the planned control methods will be protective of public health.

2. Determination of a Hazardous Condition.

An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health.

3. AWP Contents.

The AWP must contain all of the following information:

- a. Date(s) the work area was evaluated by the ((AHERA Project Designer)) person(s) that prepared the AWP;
- b. Site address(es)/location(s) where the inspection was performed;
- c. A copy of the hazardous conditions determination from a government official or licensed structural engineer;
- d. If an asbestos survey was performed, incorporate it by reference;
- e. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

f. A statement that ((The AHERA Project Designer that prepares the AWP must state in the AWP, that in his/her professional opinion, the control methods identified in)) the AWP will be protective of public health; ((and))

g. Signature(s) of the ((AHERA Project Designer)) person(s) that prepared the AWP((,); and ((AHERA Project Designer certification number, and date certification expires.))

h. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

4. AWP Procedures.

The requirements of Section 9.08.A.3-7 of this Regulation shall be complied with.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 9.09 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

A. Disposal Within 10 Days of Removal.

Except as provided in Section 9.09.C (Temporary Storage Site) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

- a. The name, address, and telephone number of the waste generator.
- b. The approximate quantity in cubic meters or cubic yards.
- c. The name and telephone number of the disposal site operator.
- d. The name and physical site location of the disposal site.
- e. The date transported.
- f. The name, address, and telephone number of the transporter.

g. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered. If requested by the disposal site operator, a copy of the Alternate Work Plan or written determination as specified pursuant to Sections 9.08.A-C of this Regulation shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to the Agency upon request.

C. Temporary Storage Site.

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.

2. The application must be accompanied by a non-refundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.

4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.

7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe used on public right-of-ways, public easements, ((or other)) and places receiving the prior written approval of the Control Officer may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

AMENDATORY SECTION

SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES

A. Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the fee schedule.

Owner-occupied, single-family residence	Waiting Period
≥ 0 ln ft and/or ≥ 0 sq ft asbestos performed by residing owner	Notification Not Required
< 10 ln ft and/or < 48 sq ft asbestos not performed by residing owner	Notification Not Required
≥ 10 ln ft and/or ≥ 48 sq ft asbestos not performed by residing owner	Prior Notice
All Demolition	3 Days

Not owner-occupied, single-family residence	Waiting Period
< 10 ln ft and/or < 48 sq ft asbestos	Notification Not Required
10-259 ln ft and/or 48-159 sq ft asbestos	3 Days
260-999 ln ft and/or 160-4,999 sq ft asbestos	10 Days
$\geq 1,000$ ln ft and/or $\geq 5,000$ sq ft asbestos	10 Days
All Demolition	10 Days

Additional categories	Waiting Period	Reference
Emergency	Prior Notice*	Sect. 9.04.A.6.h.
<u>Annual Notification (\leq 259 ln ft and/or \leq 160 sq ft)</u>	<u>Prior Notice</u>	<u>Sect. 9.04.A.6.j</u>
Amendment	Prior Notice	Section 9.04.B.
Alternate Asbestos Project Work Practices	10 days	Section 9.08.A.
Demolition with Nonfrangible Asbestos Roofing	10 days	Section 9.08.B.
Exception for Hazardous Conditions	10 days	Section 9.08.C.

* If prior notice isn't possible because of life endangerment or other serious consequences, the Agency may accept, at its discretion, a completed emergency notification if it is filed no later than the first regular Agency work day after the asbestos project and/or demolition commenced.

B. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency

shall account for program costs. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board ((shall)) **may** amend the fee schedule to more accurately recover program costs.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 10-11-041
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)

[Filed May 11, 2010, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-060.

Title of Rule and Other Identifying Information: WAC 388-450-0040 Native American benefits and payments, 388-450-0080 Why [What] is self-employment income?, 388-455-0005 How do lump sum payments affect benefits?, 388-455-0015 When and how does the department treat lump sum payments as income for cash assistance and family medical programs?, 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs?, 388-475-0350 SSI-related medical—Property and contracts excluded as resources, 388-475-0550 SSI-related medical—All other excluded resources, and 388-475-0600 SSI-related medical—Definition of income.

Hearing Location(s): Office Building 2, Auditorium, DSHS, Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2-directions.html> or by calling (360) 664-6094), on July 6, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 7, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS.RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 6, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 22, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsji4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement necessary language regarding:

(1) Exemption of certain property from resources for medicaid and children's health insurance program (CHIP) eligibility for Native Americans, as required under the American Recovery and Reinvestment Act (ARRA) of 2009 (Recovery Act); and

(2) Payments or interest accrued on payments made under the Energy Employees Occupational Illness Compen-

sation Program Act (EEOICPA) listed as excluded resources for SSI-related medical programs.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: ARRA of 2009 (Recovery Act), Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix.

Rule is necessary because of federal law, ARRA of 2009 (Recovery Act), Public Law 111-5, Section 5006(b).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1357; Implementation and Enforcement: Mary Beth Ingram, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1306.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vii) exempts client eligibility rules from the cost-benefit analysis requirement.

May 7, 2010

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-450-0040 Native American benefits and payments. This section applies to TANF/SFA, RCA, GA medical and food assistance programs.

(1) The following types of income are not counted when a client's benefits are computed:

(a) Up to two thousand dollars per individual per calendar year received under the Alaska Native Claims Settlement Act, P.L. 92-203 and 100-241;

(b) Income received from Indian trust funds or lands held in trust by the Secretary of the Interior for an Indian tribe or individual tribal member. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(c) Income received from Indian judgement funds or funds held in trust by the Secretary of the Interior distributed per capita under P.L. 93-134 as amended by P.L. 97-458 and 98-64. Income includes:

(i) Interest; and

(ii) Investment income accrued while such funds are held in trust.

(d) Up to two thousand dollars per individual per calendar year received from leases or other uses of individually owned trust or restricted lands, P.L. 103-66;

(e) Payments from an annuity fund established by the Puyallup Tribe of Indians Settlement Act of 1989, P.L. 101-41, made to a Puyallup Tribe member upon reaching twenty-one years of age; and

(f) Payments from the trust fund established by the P.L. 101-41 made to a Puyallup Tribe member.

(2) Other Native American payments and benefits that are excluded by federal law are not counted when determining a client's benefits. Examples include but are not limited to:

(a) White Earth Reservation Land Settlement Act of 1985, P.L. 99-264, Section 16;

(b) Payments made from submarginal land held in trust for certain Indian tribes as designated by P.L. 94-114 and P.L. 94-540; ~~and~~)

(c) Payments under the Seneca Nation Settlement Act, P.L. 101-503; ~~and~~

~~(d) For medical assistance, receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.~~

AMENDATORY SECTION (Amending WSR 06-15-049, filed 7/12/06, effective 9/1/06)

WAC 388-450-0080 What is self-employment income? This section applies to cash assistance, Basic Food, and medical programs for children, pregnant women and families.

(1) Self-employment income is income you earn from running a business, performing a service, selling items you make, or reselling items to make a profit.

(2) You are self-employed if you earn income without having an employer/employee relationship with the person who pays you. This includes, but is not limited to, when:

(a) You have primary control of the way you do your work; or

(b) You report your income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) You usually have an employer/employee relationship when:

(a) The person you provide services for has primary control of how you do your work; or

(b) You get an IRS form W-2 to report your income.

(4) Your self-employment does not have to be a licensed business for your business or activity to qualify as self-employment. Some examples of self-employment include:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running a lodging for roomers and/or boarders. Roomer income includes money paid to you for shelter costs

by someone not in your assistance unit who lives with you when:

(i) You own or are buying your residence; or

(ii) You rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling items you make or items that are supplied to you;

(j) Selling or donating your own biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(l) Running a business or trade either on your own or in a partnership.

(5) ~~For medical programs, we do not count receipt of money by a member of a federally-recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). We count this as conversion of a resource. See WAC 388-450-0040.~~

(6) If you are an employee of a company or person who does the activities listed in subsection (2) above as a part of your job, we do not count the work you do as self-employment.

~~((7)) (7) Self-employment income is counted as earned income as described in WAC 388-450-0030 except as described in subsection ~~((7)) (8).~~~~

~~((7)) (8) For cash assistance and Basic Food there are special rules about renting or leasing out property or real estate that you own.~~

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

AMENDATORY SECTION (Amending WSR 08-11-105, filed 5/20/08, effective 7/1/08)

WAC 388-455-0005 How do lump sum payments affect benefits? (1) A lump sum payment is money that someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance and family medical programs, we count a lump sum payment:

(a) As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property.

(b) As income, under WAC 388-455-0015, if it was received for any other reason, with the exception of subsection (3) of this section.

(3) ~~For medical programs, receipt of a lump sum by a member of a federally-recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt. Any~~

amounts remaining on the first of the next month will be counted if they remain in the form of a countable resource. Any amounts remaining the first of the month after conversion will remain exempt if they are in the form of an exempt resource.

(4) For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 08-11-105, filed 5/20/08, effective 7/1/08)

WAC 388-455-0015 When and how does the department treat lump sum payments as income for cash assistance and family medical programs. This section applies to cash and family medical programs.

(1) If you receive a lump sum payment that is not awarded for wrongful death, personal injury, damage, or loss of property, we count this payment as income to your assistance unit. We budget this income according to effective date rules under WAC 388-418-0020.

(2) For cash assistance, if you cannot access some or all of your lump sum payment for reasons beyond your control, we will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

(3) To decide the amount of your lump sum we count as income, we take the following steps:

(a) First, we subtract the value of your current resources from the resource limit under WAC 388-470-0005;

(b) Then, we subtract the difference in (3)(a) from the total amount of the lump sum; and

(c) The amount left over is what we count as income, as specified in WAC 388-450-0025 and 388-450-0030.

(4) When the countable amount of the lump sum payment is:

(a) Less than your payment standard plus additional requirements, we count it as income in the month it is received.

(b) More than one month's payment standard plus additional requirements but less than two months:

(i) We count the portion equal to one month's payment standard plus additional requirements as income in the month it is received; and

(ii) We count the remainder as income the following month.

(c) Equal to or greater than the total of the payment standard plus additional requirements for the month of receipt and the following month, we count the payment as income for those months.

(5) If you receive a one-time lump sum payment, and you are ineligible or disqualified from receiving cash benefits:

(a) We allocate the payment to meet your needs as described under WAC 388-450-0105; and

(b) Count the remainder as a lump sum payment available to eligible members of your assistance unit according to the rules of this section.

(6) For family medical programs:

(a) We count lump sum payments as income in the month you receive the payment.

(b) We count lump sums received by a member of a federally-recognized tribe for exercising federally protected rights or extraction of exempt resources as an exempt resource in the month of receipt. Any amount remaining the first of the next month in the form of an exempt resource will remain exempt. Any amount remaining the first of the month will be countable if in the form of a countable resource.

(c) If you cannot access some or all of your lump sum payment for reasons beyond your control, will adjust the amount we count as income to your assistance unit as described under WAC 388-450-0005.

((e)) (d) We count any money that remains on the first of the next month as a resource except for recipients as described in WAC 388-470-0026 (1) and (2).

AMENDATORY SECTION (Amending WSR 09-09-103, filed 4/20/09, effective 4/21/09)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs? (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Available retirement funds or pension benefits, less any withdrawal penalty;

(v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(vi) Available trusts or trust accounts; ((e))

(vii) Lump sum payments as described in chapter 388-455 WAC; or

((viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally-recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

(i) A household good;

(ii) Needed for self-employment; or

(iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

(a) Bona fide loans, including student loans;

(b) Basic Food benefits;

(c) Income tax refunds in the month of receipt;

(d) Earned income tax credit (EITC) in the month received and the following month;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(g) Individual development accounts (IDAS) established under RCW 74.08A.220;

(h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

(i) Underpayments received under chapter 388-410 WAC;

(j) Educational benefits that are excluded as income under WAC 388-450-0035;

(k) The income and resources of an SSI recipient;

(l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

(n) Adoption support payments;

(o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect; *((and))*

(p) Resources specifically excluded by federal law; *and*

(q) For medical benefits, receipts from exercising federally protected rights or extracted exempt resources (fishing, shell-fishing, timber sales, etc.) during the month of receipt for a member of a federally-recognized tribe.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-09-003, filed 4/7/04, effective 6/1/04)

WAC 388-475-0350 SSI-related medical—Property and contracts excluded as resources. (1) The department does not count the following resources when determining eligibility for SSI-related medical assistance:

(a) A client's household goods and personal effects;

(b) One home (which can be any shelter), including the land on which the dwelling is located and all contiguous property and related out-buildings in which the client has ownership interest, when:

(i) The client uses the home as his or her primary residence; or

(ii) The client's spouse lives in the home; or

(iii) The client does not currently live in the home but the client or his/her representative has stated the client intends to return to the home; or

(iv) A relative, who is financially or medically dependent on the client, lives in the home and the client, client's representative, or dependent relative has provided a written statement to that effect.

(c) The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:

(i) Uses the property as his or her principal place of residence;

(ii) Would have to move if the property were sold; and

(iii) Has no other readily available housing.

(2) Cash proceeds from the sale of the home described in subsection (1)(b) above are not considered if the client uses

them to purchase another home by the end of the third month after receiving the proceeds from the sale.

(3) An installment contract from the sale of the home described in subsection (1)(b) above is not a resource as long as the person plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home, and does so within three full calendar months after the month of receiving such down payment or installment payment.

(4) The value of sales contracts is excluded when the:

(a) Current market value of the contract is zero,

(b) Contract cannot be sold, or

(c) Current market value of the sales contract combined with other resources does not exceed the resource limits.

(5) Sales contracts executed before December 1, 1993, are exempt resources as long as they are not transferred to someone other than a spouse.

(6) A sales contract for the sale of the client's principal place of residence executed between December 1, 1993 and May 31, 2004 is considered an exempt resource unless it has been transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property; and

(c) The term of the contract does not exceed thirty years.

(7) A sales contract executed on or after June 1, 2004 on a home that was the principal place of residence for the client at the time of institutionalization is considered exempt as long as it is not transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property within the anticipated life expectancy of the client; and

(c) The term of the contract does not exceed thirty years.

(8) Payments received on sales contracts of the home described in subsection (1)(b) above are treated as follows:

(a) The interest portion of the payment is treated as unearned income in the month of receipt of the payment;

(b) The principal portion of the payment is treated as an excluded resource if reinvested in the purchase of a new home within three months after the month of receipt;

(c) If the principal portion of the payment is not reinvested in the purchase of a new home within three months after the month of receipt, that portion of the payment is considered a liquid resource as of the date of receipt.

(9) Payments received on sales contracts described in subsection (4) are treated as follows:

(a) The principal portion of the payment on the contract is treated as a resource and counted toward the resource limit to the extent retained at the first moment of the month following the month of receipt of the payment; and

(b) The interest portion is treated as unearned income the month of receipt of the payment.

(10) For sales contracts that meet the criteria in subsections (5), (6), or (7) but do not meet the criteria in subsections (3) or (4), both the principal and interest portions of the payment are treated as unearned income in the month of receipt.

(11) Property essential to self-support is not considered a resource within certain limits. The department places property essential to self-support in several categories:

(a) Real and personal property used in a trade or business (income-producing property), such as:

(i) Land,

(ii) Buildings,

(iii) Equipment,

(iv) Supplies,

(v) Motor vehicles, and

(vi) Tools.

(b) Nonbusiness income-producing property, such as:

(i) Houses or apartments for rent, or

(ii) Land, other than home property.

(c) Property used to produce goods or services essential to an individual's daily activities, such as land used to produce vegetables or livestock, which is only used for personal consumption in the individual's household. This includes personal property necessary to perform daily functions including vehicles such as boats for subsistence fishing and garden tractors for subsistence farming, but does not include other vehicles such as those that qualify as automobiles (cars, trucks).

(12) The department will exclude an individual's equity in real and personal property used in a trade or business (income producing property listed in subsection (11)(a) above) regardless of value as long as it is currently in use in the trade or business and remains used in the trade or business.

(13) The department excludes up to six thousand dollars of an individual's equity in nonbusiness income-producing property listed in subsection (11)(b) above, if it produces a net annual income to the individual of at least six percent of the excluded equity.

(a) If a person's equity in the property is over six thousand dollars, only the amount over six thousand dollars is counted toward the resource limit, as long as the net annual income requirement of six percent is met on the excluded equity.

(b) If the six percent requirement is not met due to circumstances beyond the person's control, and there is a reasonable expectation that the activities will again meet the six percent rule, the same exclusions as in subsection (13)(a) above apply.

(c) If a person has more than one piece of property in this category, each is looked at to see if it meets the six percent return and the total equities of all those properties are added to see if the total is over six thousand dollars. If the total is over the six thousand dollars limit, the amount exceeding the limit is counted toward the resource limit.

(d) The equity in each property that does not meet the six percent annual net income limit is counted toward the resource limit, with the exception of property that represents the authority granted by a governmental agency to engage in an income-producing activity if it is:

(i) Used in a trade or business or nonbusiness income-producing activity; or

(ii) Not used due to circumstances beyond the individual's control, e.g., illness, and there is a reasonable expectation that the use will resume.

(14) Property used to produce goods or services essential to an individual's daily activities is excluded if the individual's equity in the property does not exceed six thousand dollars.

(15) Personal property used by an individual for work is not counted, regardless of value, while in current use, or if the required use for work is reasonably expected to resume.

(16) Interests in trust or in restricted Indian land owned by an individual who is of Indian descent from a federally recognized Indian tribe or held by the spouse or widow(er) of that individual, is not counted if permission of the other individuals, the tribe, or an agency of the federal government must be received in order to dispose of the land.

(17) Receipt of money by a member of a federally-recognized tribe from exercising federally protected rights or extraction of exempt resources, such as fishing, shell-fishing, or selling timber from protected land, is considered conversion of an exempt resource during the month of receipt. Any amount remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if it is used to purchase another exempt resource. Any amount remaining in the form of a countable resource (such as in a checking or savings account) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

AMENDATORY SECTION (Amending WSR 06-04-046, filed 1/26/06, effective 2/26/06)

WAC 388-475-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a client who is blind or disabled to fulfill a department approved self-sufficiency plan.

(2) Retroactive payments from SSI or RSDI, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the client, spouse, or any other person financially responsible for the client;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through ((11)) 12 as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to Native Americans as listed in 20 CFR 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 CFR 416.1236.

(6) The following Native American/Alaska Native funds are excluded resources:

(a) Resources received from a Native Corporation under the Alaska Native Claims Settlement Act, including:

(i) Shares of stock held in a regional or village corporation;

(ii) Cash or dividends on stock received from the Native Corporation up to two thousand dollars per person per year;

(iii) Stock issued by a native corporation as a dividend or distribution on stock;

(iv) A partnership interest;

(v) Land or an interest in land; and

(vi) An interest in a settlement trust.

(b) All funds contained in a restricted Individual Indian Money (IIM) account.

(7) Exercise of federally protected rights, including extraction of exempt resources by a member of a federally-recognized tribe during the month of receipt. Any funds from the conversion of the exempt resource which are retained on the first of the month after the month of receipt will be considered exempt if they are in the form of an exempt resource, and will be countable if retained in the form of a countable resource.

(8) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

((8)) (9) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

((9)) (10) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(11) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

((10)) (12) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

((11)) (13) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

((12)) (14) Earned income tax credit refunds and payments are excluded as resources for nine months after the month of receipt.

((13)) (15) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

((14)) (16) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The client intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

((15)) (17) Insurance proceeds or other assets recovered by a Holocaust survivor as defined in WAC 388-470-0026(4).

((16)) (18) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

((17)) (19) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

((18)) (20) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled individuals to set aside resources necessary for the achievement of the plan's goals, are excluded.

((19)) (21) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

((20)) (22) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that Code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

((21)) (23) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

((22)) (24) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.

AMENDATORY SECTION (Amending WSR 04-09-004, filed 4/7/04, effective 6/1/04)

WAC 388-475-0600 SSI-related medical—Definition of income. (1) Income is anything an individual receives in cash or in-kind that can be used to meet his/her needs for food, clothing, or shelter. Income can be earned or unearned.

(2) Some receipts are not income because they do not meet the definition of income above, including:

(a) Cash or in-kind assistance from federal, state, or local government programs whose purpose is to provide medical care or services;

(b) Some in-kind payments that are not food, clothing or shelter coming from nongovernmental programs whose purposes are to provide medical care or medical services;

(c) Payments for repair or replacement of an exempt resource;

(d) Refunds or rebates for money already paid;

(e) Receipts from sale of a resource; ((and))

(f) Replacement of income already received. See 20 CFR 416.1103 for a more complete list of receipts that are not income; and

(g) Receipts from extraction of exempt resources for a member of a federally-recognized tribe.

(3) Earned income includes the following types of payments:

(a) Gross wages and salaries, including garnished amounts;

(b) Commissions and bonuses;

(c) Severance pay;

(d) Other special payments received because of employment;

(e) Net earnings from self-employment (WAC 388-475-0840 describes net earnings);

(f) Self-employment income of tribal members unless the income is specifically exempted by treaty;

(g) Payments for services performed in a sheltered workshop or work activities center;

(h) Royalties earned by an individual in connection with any publication of his/her work and any honoraria received for services rendered; or

(i) In-kind payments made in lieu of cash wages, including the value of food, clothing or shelter.

(4) Unearned income is all income that is not earned income. Some types of unearned income are:

(a) Annuities, pensions, and other periodic payments;

(b) Alimony and support payments;

(c) Dividends and interest;

(d) Royalties (except for royalties earned by an individual in connection with any publication of his/her work and any honoraria received for services rendered which would be earned income);

- (e) Capital gains;
- (f) Rents;

(g) Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;

- (h) Gifts;
- (i) Inheritances; ((or))
- (j) Prizes and awards; or

(k) Amounts received by tribal members from gaming revenues.

(5) Some items which may be withheld from income, but the department considers as received income are:

- (a) Federal, state, or local income taxes;
- (b) Health or life insurance premiums;
- (c) SMI premiums;
- (d) Union dues;
- (e) Penalty deductions for failure to report changes;
- (f) Loan payments;
- (g) Garnishments;
- (h) Child support payments, court ordered or voluntary (WAC 388-475-0900 has an exception for deemors);

(i) Service fees charged on interest-bearing checking accounts;

- (j) Inheritance taxes;
- (k) Guardianship fees if presence of a guardian is not a requirement for receiving the income.

(6) Countable income, for the purposes of this chapter, means all income that is available to the individual:

- (a) If it cannot be excluded, and
- (b) After deducting all allowable disregards and deductions.

WSR 10-12-030
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed May 24, 2010, 3:06 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-56-124 from the CR-102 filed as WSR 10-06-113 on March 3, 2010.

Lori Preuss
Rules Coordinator

WSR 10-12-031
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed May 24, 2010, 3:16 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-36-03001 and 220-40-030 from the CR-102 filed as WSR 10-06-102 on March 2, 2010.

Lori Preuss
Rules Coordinator

WSR 10-12-036
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed May 25, 2010, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-05-098.

Title of Rule and Other Identifying Information: Amend WAC 296-17-35203 Special reporting instruction, (1) Professional and semiprofessional athletic teams.

Hearing Location(s): Tumwater L&I Building, 7273 Linderson Way S.W., Tumwater, WA 98501, on August 25, 2010, at 1:00 p.m.

Date of Intended Adoption: October 20, 2010.

Submit Written Comments to: Ronald Moore, P.O. Box 44140, Olympia, WA 98501, e-mail MOOA235@lni.wa.gov, fax (360) 902-4988, by 5 p.m., August 25, 2010.

Assistance for Persons with Disabilities: Contact office of information and assistance by August 20, 2010, TTY (306) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 51.12.120 (6) allows a worker and employer to agree in writing that the work is principally localized out-of-state if the worker regularly works in Washington and another state. The special reporting rules for sport teams in WAC 296-17-35203(1) permit players and teams to enter into coverage agreements as provided by the statute, but regulates the agreements in a manner that is burdensome for the teams and the department. It requires a team to submit a separate agreement form signed by the player, the team, and the insurer for each player at the start of every season. This not only is a lot of administrative work for the employer, but makes managing the team accounts difficult for the department. It is nearly impossible for the account manager to confirm if the employer is compliant.

The proposal requires only that the player and team sign an initial agreement when a player is signed as is required by the statute. This document is maintained by the team. The proposal also requires a second agreement to be signed between the team and their insurer. A copy of this document must be provided to the department yearly along with a copy of the out-of-state insurance policy.

Reasons Supporting Proposal: To simplify compliance for both the employer and the department and avoid subse-

quent jurisdictional questions or disputes concerning compliance.

Statutory Authority for Adoption: RCW 51.04.020.

Statute Being Implemented: RCW 51.12.120(6).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Ronald C. Moore, Tumwater, Washington, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

May 25, 2010

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 09-16-110, filed 8/4/09, effective 10/1/09)

WAC 296-17-35203 Special reporting instruction. (1) Professional and semiprofessional athletic teams. ((Athletes assigned to a Washington domiciled sports team are mandatorily covered by Washington industrial insurance; Provided, That a professional athlete who is under contract with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120(6).)

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(e) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A separate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington domiciled teams are not subject to Washington industrial insurance for their team members while in this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this state.)) In accordance with RCW 51.12.120(6) professional athletes who are required to regularly travel in at least one other state besides Washington may agree in writing with their employer that their employment is principally localized in a state other than Washington.

(a) To be eligible, a player must regularly participate in games in the state their work is principally localized. Example: If the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they cannot agree to be under California coverage since California doesn't qualify as a state in which the player regularly competes in athletic events.

(b) Upon request, the department will provide owners of professional and semiprofessional sports teams approved forms for entering into these agreements. They are referred to as "coverage agreements." Unless coverage is refused in the alternative state, the coverage agreement will determine the worker's home state for workers' compensation coverage.

(c) When a sports team and a player agree to workers' compensation coverage in another state, the following rules apply:

Sports players' coverage agreement:

(i) A sport players' coverage agreement must be signed by the team (employer) and each individual Washington player (worker) covered out-of-state. Workers' compensation premiums for any work performed by the player before the agreement was signed must be paid to the department. To be valid, an agreement must be:

- Signed by both parties, dated, and show the name of the state providing coverage.

- Kept as part of the employer's records for at least three years after the player is released from the team.

(ii) The employer must provide the department a copy of a sports players' coverage agreement when requested. Employers who do not provide the department copies of a sports players' coverage agreement when requested are considered unregistered and all premiums and penalties allowed for in Title 51 RCW will apply.

(iii) If the employers' out-of-state workers compensation insurer rejects an injury claim because the player is a Washington worker, the employer is considered unregistered and

all premium and penalties allowed for in Title 51 RCW apply.

Sports teams' coverage agreement:

(d) A sports teams' coverage agreement must be signed by the employer (team) and the out-of-state insurer. Workers' compensation premiums for work performed before the agreement was signed must be paid to the department. To be valid, an agreement must:

• Be signed by both parties, dated, and show the name of the state providing coverage.

• Specify the insurer agreeing to provide coverage for a team based in Washington.

(e) The sports teams' coverage agreement must be signed annually. Copies of the agreement along with a current copy of their out-of-state insurance policy must be submitted to the department of labor and industries every year the out-of-state coverage is provided.

Premium payments are required for any work performed by Washington players prior to the date the department receives copies of any year's current sports teams' coverage agreement and proof of out-of-state coverage.

(2) Excluded employments. Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.-095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) Special trucking industry rules. The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) Forest, range, or timber land services—Industry rule. Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.-030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed

in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in

effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

((A)) (A) The employers' unified business identification account number (UBI).

((B)) (B) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

((C)) (C) The total contract award.

((D)) (D) Description of the forest, range, or timber land services work to be performed under terms of the contract.

((E)) (E) Physical location/site where the work will be performed including legal description.

((F)) (F) Number of acres covered by the contract.

((G)) (G) Dates during which the work will be performed.

((H)) (H) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the

absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' account online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

((i)) (i) The name of the contractor who has been engaged to perform the work;

((ii)) (ii) The contractor's UBI number;

((iii)) (iii) The contractor's farm labor contractor number;

((iv)) (iv) The total contract award;

((v)) (v) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

((vi)) (vi) Location where the work is to be performed;

((vii)) (vii) A contact name and phone number of the person, firm, or corporation who let the contract;

((VIII)) (viii) The total estimated wages to be paid by the contractor and any subcontractors;

((IX)) (ix) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

((X)) (x) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8
P.O. Box 44168
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) **Logging and/or tree thinning—Mechanized operations—Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) Special drywall industry rule.

(a) **What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) I do some of the work myself. Can I deduct material I as an owner install or finish? Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

Total owners hours ÷ (owners hours + workers hours) =
% of owner discount.

% of owner discount x (total footage of job – subcontracted footage, if any) = Total owner deduction of footage.

(c) Can I deduct material installed or finished by subcontractors? You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them? To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) Can I be disqualified from using the discounted rates? Yes. You can be disqualified from using the discounted rates for three years if you:

- (i) Do not file all reports, including supplemental reports, when due;
- (ii) Do not pay premiums on time;
- (iii) Underreport the amount of premium due; or
- (iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) If I discover I have made an error in reporting or paying premium, what should I do? If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

(7) Safe patient handling rule. The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services

would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of

nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

(8) Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).

(a) **General definitions.** For purposes of this section, the following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

Note: Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

(b) Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state? A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, it will not need to pay premiums in Washington for work in the other state during the calendar year, as long as it fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at: <http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTerritorial/Default.asp>

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

Note: Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

(c) What if a Washington employer knows the Washington workers work in another state will exceed the temporary and incidental period? If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, it must immediately provide the department with proof of out-of-state coverage in order to avoid Washington premium liability.

ity for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

(d) What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but it does not occur? If a Washington employer did not pay workers compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or non-consecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and interest. The fourth quarter report is due by January 31 of the following year.

(e) What records must the employer keep while employing Washington workers in another state? In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

(f) What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental? A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report of out-of-state work to the department for each state in which it has Washington workers performing work. The supplemental report must include the following information:

(i) The Washington employer's unified business identification number (UBI).

(ii) The Washington employer's department account identification number.

(iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.

(iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.

(v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

(vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.

(vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.

(viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state. Copies of pertinent records must be made available to auditors in the event of an audit.

(g) Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state? Washington workers may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

(h) If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington? Yes, but only if the Washington employer:

(i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;

(ii) Provides proof of out-of-state coverage;

(iii) Filed the appropriate quarterly reports with the department when due; and

(iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

WSR 10-12-042
PROPOSED RULES
SECRETARY OF STATE

[Filed May 25, 2010, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-08-006.

Title of Rule and Other Identifying Information: Rules necessary to implement new legislation, regarding the combined fund drive, passed by the 2010 Washington state legislature.

Hearing Location(s): Office of the Secretary of State, State Library Building, 6880 Capitol Boulevard, Olympia, WA, on July 13, 2010, at 10:00 a.m.

Date of Intended Adoption: July 14, 2010.

Submit Written Comments to: Tracy Workman, P.O. Box 40224, Olympia, WA 98504-0224, e-mail tracy.workman@sos.wa.gov, fax (360) 704-5258, by July 13, 2010.

Assistance for Persons with Disabilities: Contact Tracy Workman by July 12, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are regarding the transfer of the combined fund drive from the department of personnel to the office of the secretary of state. The rules also eliminate the combined fund drive committee. These new rules implement SB 6540, creates chapter 434-750 WAC and repeals chapter 357-55 WAC.

Statutory Authority for Adoption: RCW 41.04.033.

Statute Being Implemented: RCW 41.04.0331.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the secretary of state, special programs division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tracy Workman, P.O. Box 40244, Olympia, WA 98504-0244, (360) 704-5258.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

May 25, 2010

Steve Excell

Assistant Secretary of State

Chapter 434-750 WAC

COMBINED FUND DRIVE

NEW SECTION

WAC 434-750-010 Purpose. The combined fund drive is the only authorized formal solicitation of Washington state employees in the workplace on behalf of participating not-for-profit organization and federations.

NEW SECTION

WAC 434-750-020 Intent. The intent of the combined fund drive is to:

(1) Lessen the burdens of government and of local communities in meeting the needs of human health and welfare;

(2) Provide a convenient channel through which state employees and public agency retirees may contribute to the efforts of the participating organizations and federations providing services in Washington state and around the world;

(3) Minimize both the disruption of the state workplace and the costs to taxpayers caused by multiple charitable fund drives; and

(4) Ensure that participating organizations and federations are fiscally responsible in the uses of the moneys so raised.

NEW SECTION

WAC 434-750-030 Exemptions. The rules in this chapter do not apply to the collection of gifts-in-kind, such as food, clothing and toys.

NEW SECTION

WAC 434-750-040 Definitions. The following definitions apply to chapter 434-750 WAC:

"CFD" means Washington state combined fund drive.

"CFD campaign" means the period of organized solicitation of state employees and public agency retirees. This solicitation is conducted to obtain voluntary contributions, donations and charitable commitments to be allocated to approved, not-for-profit participating organizations and federations. State agencies or institutions of higher education have the flexibility to conduct a CFD campaign once a year at any time during the year.

"Federation" means a public or private not-for-profit umbrella organization made up of five or more individual member organizations approved by the CFD committee to participate in the CFD campaign.

"Participating organization" means a public 170 (c)(1) or private 501 (c)(3) not-for-profit organization whose applica-

tion is approved by the CFD to participate in the CFD campaign.

"State employer" means Washington state agencies and higher education institutions and related boards.

"Year of contributions" means the annual calendar year for collection of the voluntary payroll deductions for charitable contributions authorized by state employees and public agency retirees pursuant to these rules. The normal, full annual calendar year of contributions will begin with January and end with the ensuing December.

NEW SECTION

WAC 434-750-050 Handling and depositing contributions. The office of the secretary of state will establish a procedure for CFD staff to collect, process and deposit individual employee contributions. Contributions from fund-raising efforts will be deposited into the CFD account in the custody of the state treasurer according to state laws.

NEW SECTION

WAC 434-750-060 Staff and volunteer positions. The office of the secretary of state will establish staff and volunteer positions and committees as necessary to assist in the annual CFD campaign.

NEW SECTION

WAC 434-750-070 Responsibilities of CFD program manager. The CFD program manager exercises general supervision over all operations of the CFD and strives to take necessary steps for the achievement of CFD campaign objectives. The CFD program manager establishes and maintains the official list of agency, higher education institutions and local CFD campaign committee volunteers and the geographical area each covers.

NEW SECTION

WAC 434-750-090 Contracts. The CFD may enter into contracts and partnerships with a private institution, persons, firms or corporations for the benefit of the beneficiaries of the CFD. The CFD may also engage in advertising activities for the support of the administrative duties of the CFD. However, CFD activities will not result in the direct commercial solicitation of state employees or in a benefit or advantage that would violate one or more provisions of chapter 42.52 RCW, the state ethics law.

NEW SECTION

WAC 434-750-100 Campaign executives. Agency directors, elected officials and higher education presidents are authorized and encouraged to designate employees the opportunity to serve as CFD campaign executives to assist in the conduct of the CFD campaign. The CFD campaign executive opportunity is a rotational assignment that develops leadership, communication, and teamwork skills that will benefit the employing organization upon the employee's return. Those appointed as CFD campaign executives remain

on the payroll of their employing organization during this assignment.

NEW SECTION

WAC 434-750-110 CFD campaign support. State agencies and higher education institutions, at their discretion, are authorized to use reasonable state resources to support, promote, and conduct the annual combined fund drive campaign within their organization. Reasonable uses are not excessive in volume or frequency as determined by the agency director or institution president.

NEW SECTION

WAC 434-750-120 Local CFD campaigns. Each state employer may establish local CFD campaigns within the geographical area it covers. Each state employer and local county committee may develop promotional and fund-raising events, provide training and recognition to CFD local coordinators, develop marketing plans, supervise CFD campaign executives, and expend state or CFD funds to conduct the local CFD campaign.

NEW SECTION

WAC 434-750-130 CFD campaign occurrence. Each year the director of each state agency and president of each higher education institution may determine the time period of the agency's or institution's CFD campaign. Each annual CFD campaign normally is conducted for a seven-week period. However, in unusual circumstances, the individual state employers may extend the seven-week period as local conditions require.

NEW SECTION

WAC 434-750-140 Permission to share information during work hours. The local state employer may grant sharing of information during the CFD campaign, by participating organizations if the agency or institution determines such communication is not disruptive to the local state office or institution. All CFD participating organizations must be given an equal opportunity for communication in a state employer's local CFD campaign.

This section will not be construed to require a state employer to distribute or arrange for oral or written information other than the official CFD campaign and publicity material.

NEW SECTION

WAC 434-750-150 Campaign events during work hours. Solicitations of employees will be conducted during work hours using methods that permit true voluntary giving. Solicitations will reserve to the individual the option of disclosing any gift or keeping it confidential to the extent confidentiality is permitted by law. Campaign kick-offs, recognition events, awards and other nonsolicitation events to build support for the CFD are encouraged. CFD fund-raising events, such as raffles (as permitted by RCW 9.46.0209 and

42.52.805), drawings, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these rules are permitted when approved, in advance, by the state employer. At the discretion of each state employer, state employees may be authorized to attend CFD promotional and fund-raising events on state work time.

NEW SECTION

WAC 434-750-160 Solicitation. Employees and public agency retirees may be solicited for contributions using payroll deduction, checks, money orders, credit cards, cash or electronic methods.

NEW SECTION

WAC 434-750-170 Recovery of campaign expenses. The CFD will recover from the gross receipts of the CFD campaign, or state appropriations, its reasonable administrative expenses to conduct the CFD campaign. The secretary of state will approve an annual budget to determine the administrative fee to be charged to the beneficiaries of the CFD.

NEW SECTION

WAC 434-750-180 Deduction of fund-raising expenses. Fund-raising expenses will not be taken or deducted from donations collected during a fund-raising event. These fund-raising expenses may be paid by the state agency or higher education institution and, then, upon request and submission of proper documentation, reimbursed by the CFD.

NEW SECTION

WAC 434-750-190 Division of campaign expenses. The CFD campaign expenses will be shared proportionately by all the participating not-for-profit organizations and federations reflecting their individual percentage share of gross CFD campaign receipts.

NEW SECTION

WAC 434-750-200 Eligibility. Not-for-profit organizations must meet three requirements in order to be a member with the CFD:

- (1) Must have an approved federal IRS 501 (c)(3) or 170 (c)(1) status;
- (2) Must submit a CFD membership application; and
- (3) Must be registered with the Washington state office of the secretary of state. Registrations must be kept in an active status.

NEW SECTION

WAC 434-750-210 Organizations not eligible. If a not-for-profit organization or federation is determined not to be eligible, the CFD will provide written notice of its determination, including a description of the determination made,

the date and by whom it was made, the basis for the determination, and the procedure for requesting reconsideration.

NEW SECTION

WAC 434-750-220 Reconsideration of noneligibility.

The following process will be used for requests for reconsideration of noneligibility:

(1) Within fifteen calendar days after receiving notice of noneligibility, an affected organization or federation may submit a written request for reconsideration to the CFD. Requests for reconsideration and any supporting materials must be based solely on new or additional information that was not available to the CFD at the time the initial determination was made.

(2) Within thirty calendar days of receiving the request for reconsideration, the CFD will issue a written decision. The CFD reconsideration decision is final.

(3) The CFD may extend the time periods established in this section if it determines there is good cause to do so.

(4) Any written requests or notices made under this section will be deemed received three business days after deposited in the United States mail, properly stamped and addressed.

NEW SECTION

WAC 434-750-230 Decertification or disqualification.

Once approved for participation, any participating organization or federation may be decertified and disqualified from participation in the combined fund drive campaign by the CFD for one or more of the following reasons:

(1) Failing to comply with the rules contained in this chapter;

(2) Filing an application to participate in the state combined fund drive campaign which contains false or intentionally misleading information; or

(3) Receiving less than two hundred dollars in total CFD contributions in a calendar year.

NEW SECTION

WAC 434-750-240 Notice of decertification decisions.

The CFD will provide written notice of the decertification decision, including a description of the determination made, the date and by whom it was made, the basis for the determination, and the procedure for requesting reconsideration.

NEW SECTION

WAC 434-750-250 Decertification effective date.

Decertification is effective on the first day of the quarter following notice of decertification under WAC 434-750-240. Quarters begin on the first day of January, April, July, or October of each year. A decertified organization or federation is disqualified from participating in the CFD campaign as of that effective date.

NEW SECTION

WAC 434-750-270 Reconsideration of decertification decisions. Requests for reconsideration of a decertification decision will be governed by the procedures set forth for reconsideration of eligibility in WAC 434-750-220.

NEW SECTION

WAC 434-750-290 Decertified contributions. The CFD will direct payments originally pledged to an organization or federation that has been decertified, is in receivership, has filed for or been placed in bankruptcy, or has been or is in the process of being dissolved, be returned to donors. If the CFD determines it is not feasible to return such funds to donors, it will determine the appropriate disposition of the funds.

NEW SECTION

WAC 434-750-300 Combined fund drive advisory council. The secretary of state may create a CFD advisory council to provide advice and guidance on matters pertaining to operating the CFD. The council will consist of no more than ten members chosen by the secretary of state to represent a broad variety of charities, higher education institutions, and state agencies.

Members serve at the pleasure of the secretary. Terms are staggered, with the original board drawing for two- and three-year terms. All following terms are three years but all terms expire no later than when the appointing secretary leaves office. Vacancies may be filled by the secretary upon notice of a vacancy from the member. The council will elect a chairperson from its members annually. The frequency of meetings will be at least once a year but additional meetings may be called by the secretary or council. Council members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties. Reimbursement is at current state rates for travel and all reimbursement requests must be received within thirty days of incurring the expense.

WSR 10-12-047

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed May 26, 2010, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-034.

Title of Rule and Other Identifying Information: Chapter 314-40 WAC, Clubs.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on July 7, 2010, at 10:00 a.m.

Date of Intended Adoption: July 14, 2010.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by July 7, 2010.

Assistance for Persons with Disabilities: Contact Karen McCall by July 7, 2010, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of the liquor control board's on-going rules review process, chapter 314-40 WAC was reviewed for relevance, clarity, and accuracy. Rules to implement Interim Board Policy #01-2010 was also part of this rule making.

Reasons Supporting Proposal: The existing rules included language that is no longer relevant and needed to be revised.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.450.

Statute Being Implemented: RCW 66.24.450.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1615; and Enforcement: Pat Parmer, Chief Enforcement, 3000 Pacific Avenue S.E., Lacey, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328.

May 26, 2010
Sharon Foster
Chairman

NEW SECTION

WAC 314-40-005 Definitions. "Guest" means a person who is granted access to the privileges of a club through a temporary membership card issued for fourteen consecutive days.

"Member" means a person who is approved for club membership only after having submitted a written application and been investigated and been approved by ballot.

"Visitor" means a nonmember who is granted access to the privileges of a club based on a prearranged invitation from a bona fide member. Invitations occurring at the point of entry to the premises do not qualify.

AMENDATORY SECTION (Amending Order 107, Resolution No. 116, filed 6/16/82)

WAC 314-40-010 Operations under retail licenses. Clubs operating under any class of retail license shall govern their operations in selling liquor in accordance with the regulations set forth in Title ((H)) 66 RCW, applicable to all retail licensees, except as otherwise specifically provided in this title. Such clubs may sell liquor only to members, visitors and guests as specified in these regulations. Licensed clubs shall not be prohibited from renting, leasing or donating all or a portion of their facilities for, or making services available to,

a nonclub activity where the public is invited or admitted under conditions as permitted by WAC 314-40-080.

AMENDATORY SECTION (Amending WSR 93-11-028, filed 5/10/93, effective 6/10/93)

WAC 314-40-030 Constitution—Bylaws—House rules. (1) No license shall be issued to any organization or club unless its constitution, bylaws, and house rules are submitted to the board as evidence that the applicant qualifies as a bona fide club under provisions of state liquor laws and regulations.

(2) The constitution, bylaws and/or house rules shall provide, among other things:

(a) That all classifications of members must be admitted only ((on)) after written application and only after investigation and ballot. Such admissions must be duly recorded in the official minutes of a regular meeting;

(b) Standards of eligibility for members;

(c) Limitation on the number of members consistent with the nature of the organization or club;

(d) That not more than twelve honorary members be admitted in any one calendar year, and that nonresident and associate members be restricted to numbers consistent with the nature of the organization or club;

(e) Reasonable initiation fees and dues consistent with the nature and purpose of the organization or club;

(f) The period for which dues shall be paid and the date upon which this period shall expire;

(g) Reasonable regulations for the dropping of members for the nonpayment of dues;

(h) Strict regulations for the government of organization or club rooms and quarters generally consistent with its nature and character;

(i) That organization or club rooms and quarters must be under the supervision of a manager and house committee, which committee shall be appointed by the governing body of the organization or club;

(j) Provisions for visitors and for the issuance and use of guest and courtesy cards in accordance with WAC 314-40-040.

AMENDATORY SECTION (Amending WSR 95-16-030, filed 7/21/95, effective 8/21/95)

WAC 314-40-040 Guest and courtesy cards—Visitors. (1) Guest cards ((may be issued only as follows:

(a) For clubs located within the limits of any city or town, only to those persons residing outside of an area ten miles from the limits of such city or town;

(b) For clubs located outside of any city or town only to those persons residing outside an area fifteen miles from the location of such club. Provided, That where such area limitation encroaches upon the limits of any city or town, the entire corporate limits of such city or town shall be included in the prohibited area;

(e) Such)) are intended for invited guests residing outside of the immediate area.

(a) Guest cards shall be issued no more than three times per year for a period not to exceed ((two weeks)) fourteen consecutive days, and must be numbered serially, with a

record of the issuance of each such card to be filed in a manner as to be readily accessible to the agents of the board;

((d) Mileage restrictions in (a) and (b) of this subsection shall not apply to) (b) Contestants in golf or tennis tournaments conducted on the grounds of a licensed club will be considered a visitor for the day(s) of the event.

(2) Visitors may be introduced when accompanied at all times by a member, who is not an on duty employee, and may remain as long as such member is present in the club((: Provided, That)). Any such visitor may only enjoy the privileges of the club ((a reasonable number of)) six times in any one calendar year.

(3) Persons who are members in good standing of a national veterans organization may enjoy the privileges of any licensed club affiliated with any national veterans organization, and persons who are members in good standing of a national fraternal organization may enjoy the privileges of any club affiliated with that particular national fraternal organization((: Provided, That)) if the bylaws of such clubs authorize reciprocal privileges((: Provided further, That)). Subsections (1) and (2) of this section shall not apply to members of such organizations.

(4) Persons who are members in good standing of organizations licensed as private nonfraternal clubs may enjoy the privileges of other licensed nonfraternal clubs((: Provided, That)) if the bylaws of such clubs authorize reciprocal privileges((: Provided further, That)). Subsections (1) and (2) of this section shall not apply to members of such clubs.

(5) Courtesy cards may be issued to the adult members of the immediate family of any member with or without charge upon application being made to the club by the member.

(6) In order to recruit new members and build club membership, a private club may hold a public membership function for ((one)) two days per calendar year where club liquor may be given or sold to those attending as a part of the membership drive activities. The function must be advertised as a membership drive ((and may not be held in conjunction with any other nonclub activity or event)). Membership drives may not be held on consecutive days.

(7) A person issued a guest card by the club manager pursuant to subsection (1) of this section may introduce visitors into the club provided:

(a) The visitors are accompanied at all times by the sponsoring guest card holder;

(b) The visitors remain in the club only as long as the sponsoring guest card holder is present; and

(c) The house rules or bylaws of the club provide guest card holders the privilege of introducing visitors into the club((: and, such house rules or bylaws have been filed with the liquor control board)).

AMENDATORY SECTION (Amending Rule 107, filed 6/13/63)

WAC 314-40-050 Records. (1) In addition to the requirements of WAC 314-16-160, clubs shall maintain a complete system of bookkeeping covering all operations of the club, with the operations thereof pertaining to liquor being kept separate in a manner prescribed by the board. All

such records shall be ((maintained in an office on the licensed premises)) accessible and be available for inspection and audit by agents of the board((, which)). Board agents shall be entitled to make copies ((thereof)) or abstracts ((therefrom)) or, upon furnishing a proper receipt ((therefor)), remove the originals for such purposes as the board deems necessary.

(2) After initial licensure, house rules and bylaws shall be submitted to the board whenever changes are made. A copy of the house rules and/or bylaws must be available for inspection by any law enforcement officer or agent of the board during any premises check of the club.

(3) In addition to WAC 314-40-040 visitor records with date and time and sponsoring member must be kept for a minimum of two years.

(4) In addition to WAC 314-40-040 guest records must contain the full name, date of birth, and address of the guest receiving the temporary membership card.

AMENDATORY SECTION (Amending Order 246, Resolution No. 255, filed 4/5/88)

WAC 314-40-080 Designated portion of club used for service and consumption of liquor. (1) Each club shall submit a sketch of the entire premises including the portion used for storage, sale and consumption of liquor, for approval. No change in any portion of the club premises ((so described and approved)) shall be made without the consent of the board.

(2) Where the physical setup of the club rooms or quarters renders it practical so to do, such portion of the club premises shall be a room or rooms devoted solely to such service and capable of being entirely closed from the remainder of the club rooms or quarters. Bona fide members may possess and consume their own ((liquor)) alcohol, as authorized by the club's license type, at any time and in any part of the club premises as permitted under the bylaws and/or house rules of the club, provided such bylaws and/or house rules have been filed with the board and except in those portions of the club where nonclub events or public events are occurring.

(3) ((If the club rents any portion of the club rooms or quarters for any purpose other than a strictly club purpose, or holds any function within the club rooms or quarters to which the public generally is invited or admitted, then such portion devoted to liquor service must be closed to the public generally and no one admitted therein, except bona fide members, bona fide visitors and bona fide guests. If such portion cannot be so closed, then no such liquor service whatever shall be permitted within the club rooms or quarters during the entire time when such nonclub activity is taking place or while the public generally is permitted within the club rooms or quarters)) Any portion of a private club must be closed to the general public when liquor is sold, served, or consumed.

During events that are open to the general public, members, guests, and/or visitors, may not possess alcohol in areas that are open to the general public.

(4) A club may conduct outside one-time events not to exceed twelve per calendar year for club members provided that:

(a) A request is submitted in writing by the licensee or designee at least five business days before the event which includes a clearly defined site plan of the outside area and the

date, time, and type of event. Approval must be received prior to the event.

(b) The licensee must have lease hold rights to the outside area where the one-time event is being held. The outside area is adjacent and/or contiguous to the actual licensed premises, must not be across public right of ways, and must be enclosed with a barrier a minimum of forty-two inches in height. This area will be considered restricted and all minor restrictions under RCW 66.44.310 will apply.

(c) All liquor must be prepared, served, and consumed inside the outside service area; persons with liquor may not leave the outside service area. An employee(s) shall be stationed inside the outside service area at all times.

(d) Sufficient lighting must be maintained under WAC 314-11-055.

NEW SECTION

WAC 314-40-095 Endorsements to private club licenses. (1) Under RCW 66.24.450, the board may issue an endorsement allowing the club to hold up to forty nonclub, member-sponsored events using club liquor.

(a) Each event must have a sponsoring member from the club.

(b) Each visitor and/or guest may only attend the event by invitation of the sponsoring member(s).

(c) Event may not be open to the general public.

(d) At least seventy-two hours prior to any nonclub event, the sponsoring member, or any club officer, must provide to the board: The date, time, and location of the event, the name of the sponsor of the event, and a brief description of the purpose of the event.

(e) A list of all invited guests and visitors must be available for inspection during the nonclub event.

(2) Under RCW 66.24.450, the board may issue an endorsement allowing the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption.

(a) Spirits and beer may not be sold for off-premises consumption.

(b) Bottled wine may only be sold to members, visitors, and guests defined under WAC 314-40-005. Bottled wine may not be sold to the general public.

WSR 10-12-056 PROPOSED RULES DEPARTMENT OF HEALTH

[Filed May 27, 2010, 10:56 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 246-260 WAC, Water recreation facilities (pools and spas) and chapter 246-262 WAC, Recreational water contact facilities (water parks and slides).

Hearing Location(s): Department of Health, 310 Israel Road, Point Plaza East, Room 152-153, Tumwater, WA 98501, on August 2, 2010, at 1:30 p.m.

Date of Intended Adoption: August 3, 2010.

Submit Written Comments to: J. Mark Soltman, Department of Health, P.O. Box 47825, Olympia, WA 98504-7825, waterrecreationrule@doh.wa.gov, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2261, by August 2, 2010.

Assistance for Persons with Disabilities: Contact Ted Dale by July 26, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to eliminate technical conflicts between these two chapters and the federal requirements established by the Pool and Spa Safety Act, also known as the Virginia Graeme Baker Pool and Spa Safety Act. The federal act took effect December 18, 2008, and is implemented by the Consumer Product Safety Commission for existing pools and spas. The proposed rules incorporate new anti-entrapment construction requirements for new pools and spas, and pools and spas remodeled after the effective date of these rules.

Reasons Supporting Proposal: The Washington state board of health sets health and safety requirements for public facilities in chapters 246-260 and 246-262 WAC. Suction entrapment prevention has been a key element of state rules for many years. However some segments of the state rule relating to the design of main drains and suction outlets are now in conflict with the new federal statute. This conflict has contributed to inconsistent application of safety standards across the state. The proposed revisions make the state rules consistent with the federal statute.

Statutory Authority for Adoption: RCW 70.90.120.

Statute Being Implemented: RCW 70.90.120.

Rule is necessary because of federal law, Virginia Graeme Baker Pool and Spa Safety Act, 15 U.S.C. 8001 Title XIV Pool and Spa Safety.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: J. Mark Soltman, TC Building #3, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3366; Implementation and Enforcement: Gary Fraser, TC Building #3, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3073.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

May 27, 2010
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abbreviations" (technical):

"CPR" means cardiopulmonary resuscitation;

"DE" means diatomaceous earth;

"F" means Fahrenheit;

"fps" means feet per second;

"gpm" means gallons per minute;

"mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available;

"ppm" means parts per million. See notation under mg/l for use;

"TU" means turbidity unit as measured by the nephelometric method.

(2) Acronyms:

(a) "ALTI" means Advanced Lifeguard Training International;

(b) "ANSI" means American National Standards Institute;

(c) "APHA" means American Public Health Association;

(d) "ARC" means American Red Cross;

(e) "ASA" means American Standards Association;

(f) "ASHRAE" means American Society of Heating, Refrigeration and Air Conditioning Engineers;

(g) "ASME" means American Society of Mechanical Engineers;

(h) "ASTM" means American Society for Testing and Materials;

((+))) (i) "AWWA" means American Waterworks Association;

((+))) (j) "E&A" means Ellis and Associates;

((+))) (k) "CPSC" means U.S. Consumer Product Safety Commission;

((+))) (l) "EPA" means U.S. Environmental Protection Agency;

((+))) (m) "FINA" means Federation Internationale de Natation Amateur;

((+))) (n) "IAPMO" means International Association of Plumbing and Mechanical Officials;

((+))) (o) "NAUI" means National Association of Underwater Instructors;

((+))) (p) "NSF" means National Sanitation Foundation;

((+))) (q) "NSPI" means National Spa and Pool Institute;

((+))) (r) "PADI" means Professional Association of Diving Instructors;

((+))) (s) "UBC" means Uniform Building Code;

((+))) (t) "UL" means Underwriters' Laboratories;

((+))) (u) "WRF" means water recreation facility;

((+))) (v) "WRPA" means Washington Recreation and Parks Association;

((+))) (w) "WSDA" means Washington state department of agriculture; and

((+))) (x) "YMCA" means Young Men's Christian Association.

(3) Definitions:

"Anti-entrapment system" means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:

(a) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;

(b) Suction limiting vent system with a tamper-resistant atmospheric opening;

(c) Gravity drainage system that utilizes a collector or balancing tank; and

(d) Drain disablement that eliminates the use of suction outlets.

"Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with this chapter.

"Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.

"ASME A112.19.8 standard" means the ASME A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a-2008 Addenda and the ASME A112.19.8b-2009 Addenda.

"Attendant" means a person appointed by the owner or manager meeting the training requirements of this chapter who monitors activities and conditions for the purpose of ensuring bather safety.

"Bathing beach" means a bathing place, together with buildings and appurtenances, on a natural pond, lake, stream, or other body of fresh or salt water that is open to the public for bathing by express permission of the owner, operated for a fee, or openly advertised as a place for bathing by the public.

"Board" means the state board of health.

"Branch line" means suction piping between a junction fitting and a suction outlet.

"Commercial strength ammonia" means ammonia having a strength of twenty-six degrees Baume'.

"Communication system" means any combination of devices permitting the passage of messages between personnel and/or personnel and bathers. Systems can include but are not limited to two-way radios, hard wired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

"Contaminant" means any physical, chemical, or biological substance present in the WRF water which may adversely affect the health or safety of the bather or the quality of the water.

"Cross-connection" means any physical arrangement connecting:

(a) Potable water system directly or indirectly, with anything other than another potable water system; or

(b) WRF pool to any water source capable of contaminating either the WRF pool, its components, or potable water source as a result of backflow.

"Department" means the state department of health.

"Deep water" means water greater than five feet in depth.

"Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or pool decking intended for users to dive.

"Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW.

"Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.

"Fall zones" mean the areas under and around play toys where a person playing on them could fall. These areas should be free of obstacles or other equipment so that there's plenty of room. Basic guidelines include the following:

(a) Fall zones should extend a minimum of six feet in all directions from the perimeter of the play toy equipment.

(b) If the height of an adjacent play toy is thirty inches or more, the minimum distance between pieces of play equipment should be at least nine feet.

"General use pool" means any swimming, spa, wading, or spray pool regulated by this chapter not meeting the definition of a "limited use pool."

"Handhold" means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

"Illness or injury report" means the written record of all facts regarding an injury or illness associated with the WRF.

"Innovative design feature" means a design feature, equipment, device, or operative procedure not specifically covered by these rules or chapter 246-262 WAC.

"Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

"Licensed medical practitioner" includes medical doctor, osteopath, chiropractor, naturopath, and medical therapist currently licensed in Washington state.

"Lifeguard" means a person meeting the training requirements of these rules appointed by the owner or manager to maintain surveillance over the bathers on the deck or in the pool and to supervise bather safety.

"Lifeguard station" means designated work station of a lifeguard.

"Lifesaving equipment" means emergency equipment and barrier protection.

"Lifesaving Society" means the organization in Canada that establishes training requirements and standards for lifeguard training.

"Limited use pool" means any swimming, spa, wading, or spray pool regulated by this chapter at an apartment, boarding home, condominium, fraternity, home owners association, hotel, mobile home park, motel, recreational vehicle park, sorority or rental housing unit for the use of the persons living or residing at the facility and their resident's invited guests.

When organized programs are provided at the facility (including, but not limited to, formal swimming or diving lessons, swim meets, or exercise classes), for users besides those

specified under the limited use category, the pool facility shall be considered to be a general use pool during periods of such activity.

"Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

"Main drain" means a submerged suction outlet for transferring water from a swimming pool, spa pool, or wading pool.

"Outlet drain" means a drain for transferring water from a spray pool.

"Owner" means a person owning and responsible for a WRF or their authorized agent.

"Person" means an individual, firm, partnership, copartnership, corporation, company, association, club, government entity, or organization of any kind.

"Physical plant" refers to pool shell, piping, lighting, ventilation, locker rooms, chemical storage rooms, mechanical rooms, or other structural facility components that are not readily modified. It does not include pumps, filters or disinfection systems.

"Play toy" is a water feature added to a pool for use by bathers that provides activity or action that enhances the overall use of the water environment. Such feature may include, but not be limited to, fixed stationary features, inflatable or floatable equipment, or other equipment with the intent to invite bathers to play on or around the feature.

"Pool" means swimming pool, wading pool, spray pool, or spa pool or the like.

"Private club" means a group or organization requiring membership enrollment.

"Radius of curvature" means the radius arc denoting the curved surface from the point of departure from the spring-line (vertical sidewall) of the pool to the pool bottom.

"Response time" means time between bather distress and initiation of rescue assistance contact by a lifeguard in facilities providing lifeguards.

"Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to water slides, wave pools, and water lagoons. These facilities are regulated by chapter 246-262 WAC.

"Secretary" means the secretary of the department of health.

"Serious injury" means any injury:

(a) Requiring emergency service response where a person requires medical treatment as determined by the emergency medical response personnel; or

(b) Resulting in a person seeking medical attention at a medical facility, hospital emergency room or admittance to a hospital.

"Shallow water" means water equal to or less than five feet in depth.

"Shallow water lifeguard" means a person appointed by the owner or manager to supervise bather safety in water depths not exceeding five feet who meets the training requirements of this chapter.

"Spa pool" means a pool designed for relaxation or recreational use where the user is usually sitting, reclining, or at rest and the pool is not drained, cleaned, and refilled for each user. The spa pool may include, but not be limited to, hydro-jet circulation, hot water, cold water, mineral baths, air induction bubbles in any combination.

"Spray pool" means a pool or artificially constructed depression for use by bathers in which water is sprayed, but is not allowed to pond in the bottom of the pool.

"Springline" means the point where the pool wall breaks from vertical and begins its arc in the radius of curvature (for cove construction) to the bottom of the pool.

"Suction outlet" means a fitting, fitting assembly and related components including the sump or bulkhead fitting, cover and hardware, that provides a localized low pressure area for the transfer of water from a water recreation facility. Types of suction outlets include main drains, equalizer line outlets, and submerged outlet drains.

"Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing and having a depth of two feet or more at any point and including all associated facilities.

"Swim spa" means a type of spa pool used primarily for stationary swimming.

"Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

"Turnover time" means the minimum time necessary to circulate the entire volume of the pool facility through the treatment system.

"Wading pool" means any artificial pool of water equal to or less than two feet deep and intended for wading purposes.

"Walking surface" means any surface used as a direct access surface for a pool area and the walking surface's change room facilities where the user is barefoot.

"Water treatment operator" means the appointed person operating the physical and mechanical equipment and performing related water quality monitoring and associated record keeping for proper operation of the physical facility.

"Water recreation facility (WRF)" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined under RCW 70.90.110 and regulated under chapter 246-262 WAC;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

AMENDATORY SECTION (Amending WSR 05-09-004, filed 4/7/05, effective 5/8/05)

WAC 246-260-031 General design, construction, and equipment for all WRF pool facilities. (See additional

design and construction requirements for swimming pools in WAC 246-260-041, for spa pools in WAC 246-260-051 and 246-260-061, for wading pools in WAC 246-260-071, for spray pools in WAC 246-260-081 and for specialty design conditions in WAC 246-260-091. See chapter 246-262 WAC for specific requirements for water park type features.)

(1) **Location:** Owners shall locate pools to minimize surface drainage and other potential sources of pollution from entering the pool.

(2) **Materials:** Owners shall use only structure and equipment materials that are nontoxic, durable, inert, and easily cleanable.

(3) **Walking surfaces:** Owners shall design and maintain walking surfaces:

(a) Sloping away from the pool or pools;

(b) Sloping a minimum of one-fourth inch per foot to drain;

(c) Having a nonslip finish;

(d) Not having an abrupt change in height of greater than one-half inch, a gap no greater than one-half inch in width, or a crumbling surface presenting a potential tripping hazard;

(e) Equipped with sufficient drains to prevent standing water; and

(f) Of easily cleanable, impervious finishes.

(4) **Barriers for new construction and remodeling:**

(a) Owners shall provide barriers to prevent unauthorized persons from gaining access to pools. Spray pool facilities without standing water are exempt from barrier requirements of this section.

(b) Barriers at limited use pools must be at least sixty inches high.

(c) Barriers at general use pools must be at least seventy-two inches high.

(d) Barriers, including windows, (see figures 031.1 and 031.2) may not:

(i) Allow passage of a four-inch diameter sphere; or

(ii) Have spaces between vertical members greater than a width of one and three-quarter inches if the distance between the tops of horizontal members are spaced less than forty-five inches apart.

(e) Solid barriers may not have indentations or protrusions, other than normal construction tolerances and masonry joints.

(f) Barriers must have self-closing, self-latching gates or doors that provide either:

(i) A mechanism that uses a continuously locked latch, coded lock or other equivalent access control system that always requires a key or code to enter pool area. If the latch is less than sixty inches from the ground, the barrier must have an eighteen-inch radius of solid material around the latch (see figure 031.2) to preclude a child on the outside of the barrier from reaching through the gate or barrier and opening the latch and entering the pool; or

(ii) A latch height of sixty inches or more from the ground.

(g) Restricted area service entrances are exempt from door or gate requirements provided that no public access is available.

(h) Lifeguarded pools are not required to have a self-closing, self-latching gate during the period a pool is in use.

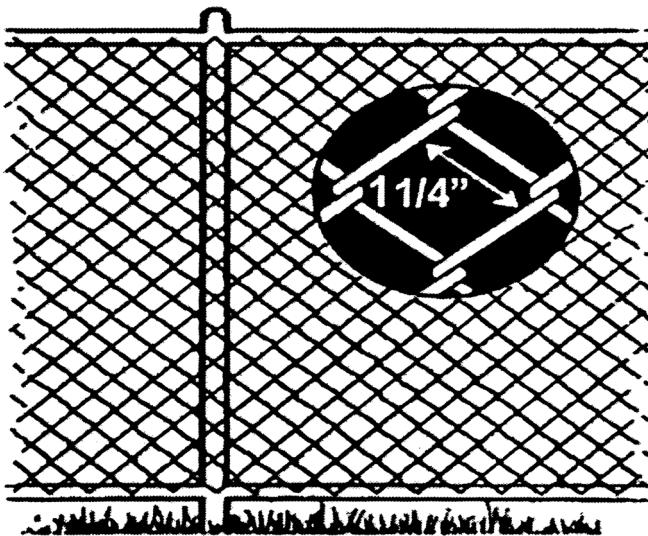
Facility gates shall be closed and locked during nonuse periods.

(i) Barrier heights are measured on the side outside the pool enclosure area. Owners shall ensure that surrounding ground levels, structures, or landscaping do not reduce the effective height of the barrier.

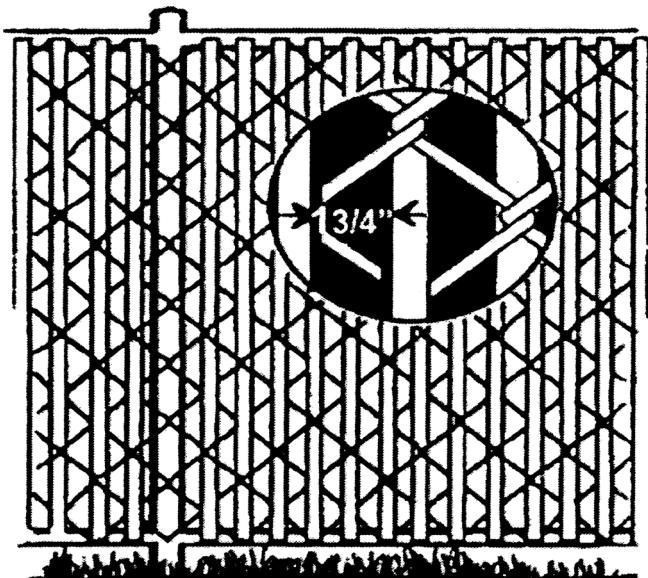
Figure 031.1
Barrier Construction Detail

(a). For a Chain Link Fence:

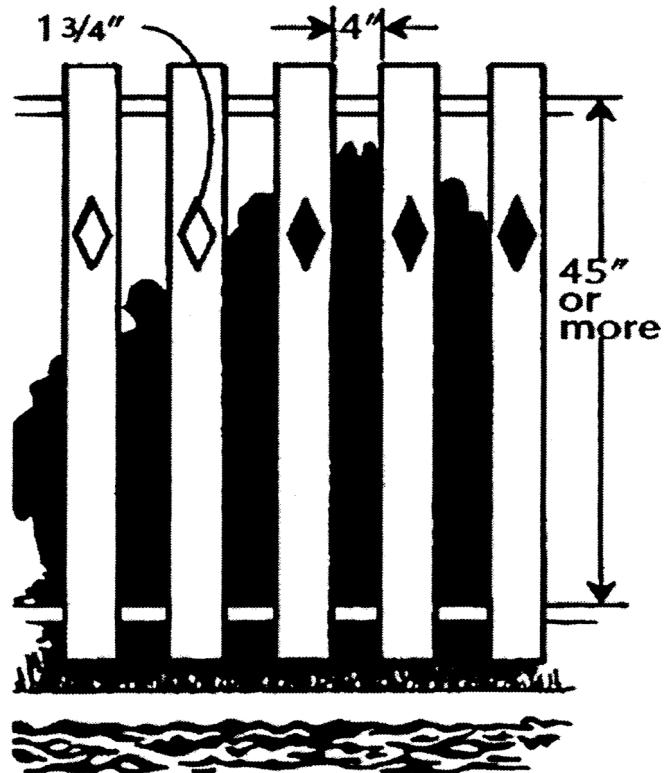
The mesh size shall not exceed 1 1/4 inches square.



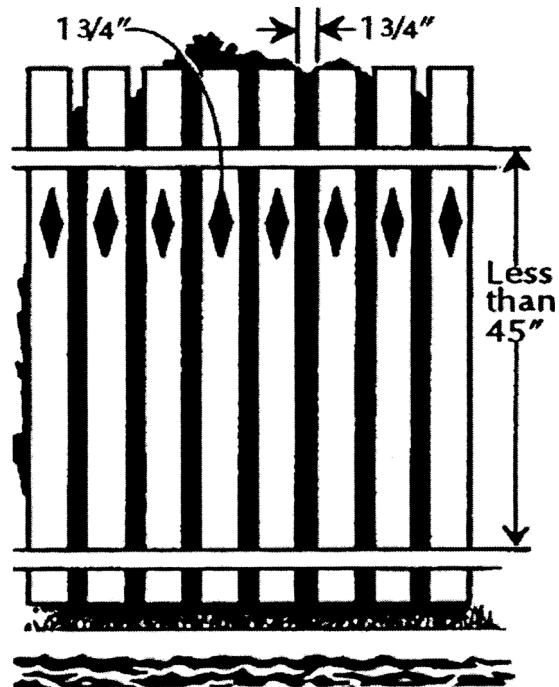
(b). When chain link exceeds 1 1/4 inches square, provide slats to reduce mesh openings to no more than 1 3/4 inches.



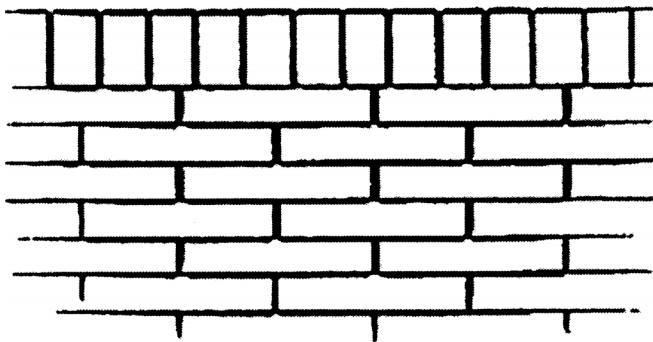
(c). Vertical Spacing: If tops of horizontal members are greater than 45 inches apart, vertical spacing shall not exceed 4 inches.



(d). Vertical Spacing: If tops of horizontal members are less than 45 inches apart, vertical spacing shall not exceed 1 3/4 inches.



(e). Solid Barrier: No indentations or protrusions shall be present, other than normal construction tolerances and masonry joints.



(f). Maximum Clearance shall not exceed 4 inches above grade.

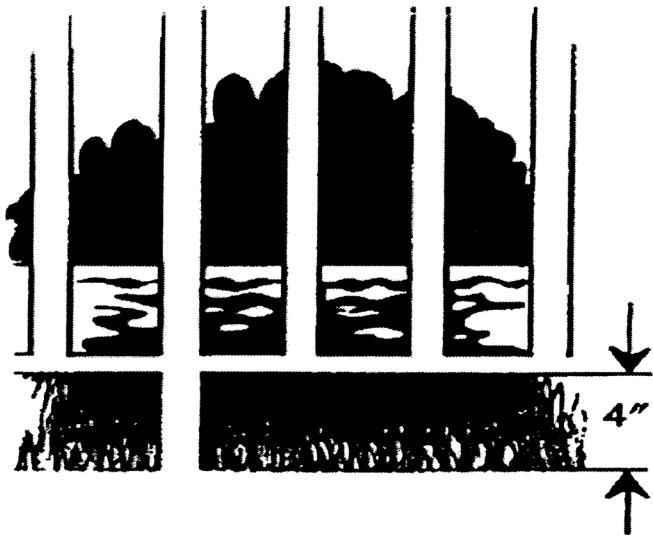
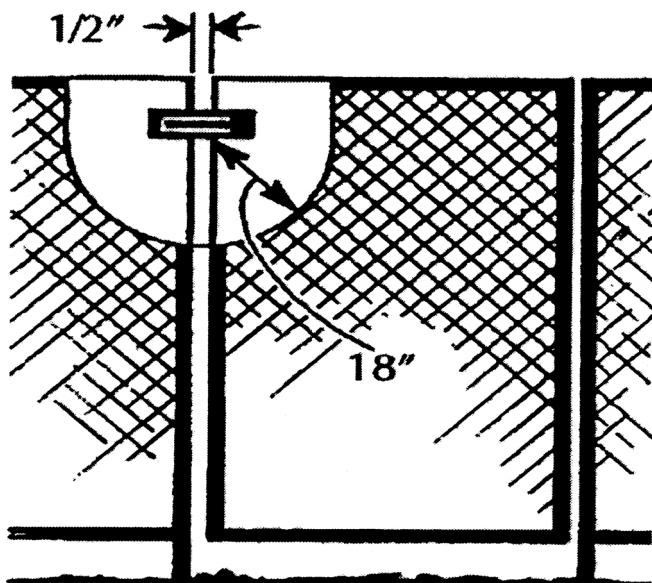


Figure 031.2 Gate and Latch Detail: When latch height is less than 60 inches from the ground, a continuously locked lock must be provided with an 18 inch radius of protection around the latch.



(5) Barriers for existing facilities: Before June 1, 2008, owners shall provide barriers for all pools conforming with subsection (4) of this section. Barrier modifications made prior to the compliance deadlines shall meet the requirements in subsection (4) of this section, at the time the modifications are made.

(6) Pool surface: Owners shall ensure pool surfaces are constructed and maintained to:

(a) Have white or light color finish;

(b) Not cause cutting, pinching, puncturing, entanglement, or abrasion hazard under casual contact; and

(c) Conform to ANSI/NSPI-1 2003 Standards for Public Swimming Pools or ANSI Standard NSPI-@-1999, American National Standard for Public Spas.

(7) Inlets: Owners shall provide pool inlets that are:

(a) Submerged;

(b) Located to produce uniform water and chemical circulation throughout the pool; and

(c) Located on the bottom of swimming and wading pools over twenty-five hundred square feet and spa pools greater than ten thousand gallons.

(8) Outlets:

(a) Except as provided in (f) and (g) of this subsection, owners shall provide pool outlets with:

(i) Overflow and main drain ((~~grating~~)) systems each designed to carry one hundred percent of the total recirculation filter flow;

(ii) Main drain piping systems designed to carry one hundred percent or more of total recirculation filter flow when a single pump is used or fifty percent or more of total recirculation filter flow when multiple pumps are used; and

(iii) Valving on main drain piping designed to provide required flow.

(b) Owners shall ensure that overflow outlets maintain a minimum of sixty percent of filter recirculation flow at all times.

(c) Overflow outlets must consist of an overflow channel on the perimeter of swimming pools twenty-five hundred square feet or more and spa pools ten thousand gallons or more, to promote uniform circulation and skimming action of the upper water layer with:

(i) A design preventing all matter entering the channel from returning to the pool;

(ii) Dimensions minimizing the hazard for bathers, such as catching arms or feet;

(iii) One one-hundredth of a foot slope per foot or more. However, adequate hydraulic justification from a designer to ensure the overflow system will meet (c)(v) of this subsection may be provided as an alternative;

(iv) Drains sufficiently spaced and sized to collect and remove overflow water to return line and filter, where applicable; and

(v) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow without flooding the overflow channel.

(d) Overflow outlets must consist of skimmers or overflow channels for pools less than twenty-five hundred square feet, or for spas under 10,000 gallons.

(i) Weirs provided in skimmers must have a normal operation flow rate of three to five gpm per inch of weir;

(ii) Skimmer equipment must be recessed in the pool wall so no part protrudes beyond the plane of the wall into the pool;

(iii) Skimmers must be equipped with a device, such as an equalizer line, to prevent air lock in the recirculation suction line. If equalizer lines are used, they must be protected with ((grates listed by IAPMO or UL)) a suction outlet that conforms to the ASME A112.19.8 standard. Pools with an equalizer line that can be a sole source of suction must also be equipped with an anti-entrapment system;

(iv) Skimmers must be equipped with a removable and cleanable screen designed to trap large solids;

(v) Skimmers shall operate continuously with a minimum displacement rate of fifteen gallons per bather in swimming pools, twenty gallons in spa pools, and seven gallons in wading pools.

(e) Main drains in all pools must:

(i) Be located at swimming and wading pool low points;

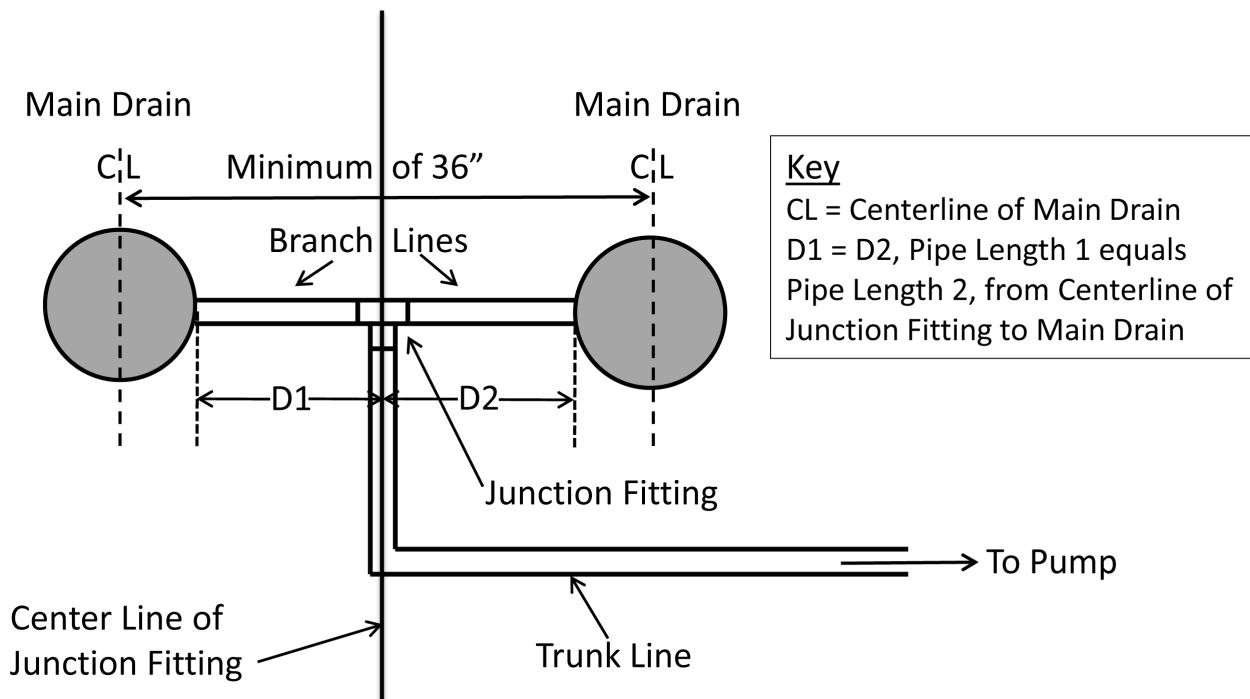
(ii) Have piping designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps up to the main drain outlet box;

(iii) Have covers on main drains with maximum flow of one and one-half feet per second;

(iv) Consist of two or more main drains for any pumped water recirculating system designed;

(A) Piping must be manifolded ((to assure the water pumps from both main drains simultaneously so that no single drain could be the sole source of suction)) with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting (see Figure 031.3);

Figure 031.3
Main Drain Branch Line Piping Detail



(B) Main drains must be spaced at least three feet apart ((or as far as practical in small spa pools. If a pool uses more than two main drains with a pump, the design must distribute flow so that no single drain could be the primary source of suction)), measured between the centers of the drain covers;

(C) ((Piping must be designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps up to the main drain outlet box.)) Main drains must conform to the ASME A112.19.8 standard;

(D) Multiple main drains must be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 031.4.

Table 031.4
Main Drain Flow Rating Requirements

	<u>Number of Main Drains Per Recirculation System</u>			
	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.</u>	<u>100%</u>	<u>50%</u>	<u>33.3%</u>	<u>25%</u>

((iii) Have grates on drains with maximum flow of one and one-half feet per second or net outlet area four times or greater than the discharge pipe;

(iv) Have openings that prevent a sphere greater than one-half inch in diameter passing;

(v) Have mechanically fastened grates designed to withstand the force of users;

(vi) Have the total open area of grates sized to prevent a suction or entrapment hazard dangerous to user; and

(vii) For spa pools, have a design listed by IAPMO or UL to aid in preventing hair entrapment, if the main drains are located on vertical walls of the spas.))

(f) Existing water recreation facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(g) New water recreation facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(9) **Pumps:** Owners shall provide and maintain recirculation pumps with adequate capacity to provide design flows for the entire operating and backwash cycles of the filter.

(10) **Strainers:** Owners shall provide hair and lint strainers for pumps that precede filters.

(11) **Pool appurtenances:**

(a) Owners shall ensure pools have:

(i) Handholds when the pool deck is greater than twelve inches above the water surface;

(ii) Stairs leading into spa pools;

(iii) Step risers on the exterior of the spa pool shall conform with UBC requirements for risers with nonslip tread finishes, when spas are elevated off the pool floor; and

(iv) Stairs, ladders, or stepholes for access at the shallow end of swimming pools.

(b) Owners shall ensure that stairs, when provided, meet the following construction requirements:

(i) Nonslip tread finish;

(ii) Contrasting color stair tread edges;

(iii) Placement recessed into the side of pools specifically designed for lap or competitive swimming;

(iv) Handrail having leading edges less than eighteen inches beyond and less than eight inches inside (horizontally) the vertical plane of the bottom riser;

(v) Each riser tread shall have a minimum unobstructed, tread depth of ten inches and minimum surface area each of two hundred forty inches;

(vi) Uniform riser heights of seven and one-half inches or less on general use swim pools fifteen hundred square feet or more and spa pools greater than forty feet in perimeter, except the bottom riser may be less than the uniform height; and

(vii) Uniform riser heights of ten inches or less for all other pools, except the bottom riser may be plus or minus two inches of the uniform height.

(c) Ladders or stepholes at swimming pools shall be:

(i) Spaced at a minimum of one for every seventy-five feet of swimming pool perimeter deeper than four feet;

(ii) Provided at both sides of the deep end of swim pools over thirty feet in width; and

(iii) Equipped with handrails.

(12) **Valves:** Owners shall provide valves to allow isolation and maintenance of equipment.

(13) **Balancing tanks:** Owners shall provide balancing tanks for pools designed with overflow channels. Balancing tanks must be of adequate size to prevent air lock in the pump suction line and have sufficient capacity to prevent flooding of the overflow channel.

(14) **Equipment and chemical storage rooms:** Owners shall provide enclosed, locked, lighted, vented rooms for mechanical equipment, with floors sloped to a floor drain and minimum access area three feet wide around equipment. Owners shall provide a separate chemical storage area or room that conforms to manufacturer's requirements for each chemical used in the pool area.

(15) **Make-up water:** Owners shall ensure an adequate supply of make-up water with associated piping, for each pool:

(a) Sufficient to replace daily pool losses;

(b) From a supply conforming to chapter 246-290 WAC;

(c) Without cross connections; and

(d) If using a pool fill spout, the spout may not project greater than one inch into the space above the water surface and shall be shielded so as not to create a deck hazard.

(16) **Filters:**

(a) Owners shall equip pools with filtration equipment:

(i) Meeting the applicable standards of NSF (for commercial application) or equivalent;

(ii) With a rate of flow indicator and gauge(s) for monitoring backpressure on filter;

(iii) With a means of discharging filter backwash to waste with a sight glass in a manner not creating a cross connection or a public nuisance;

(iv) With a means to release air entering the filter tank for pressure filters.

(b) If cartridge filters are used, owners shall always possess an extra set of cartridges and may not use cartridge filters with bypass valves.

(17) Disinfection equipment:

(a) Owners shall provide disinfection equipment:

(i) Providing a continuous and effective disinfectant residual;

(ii) Using a disinfectant with an easily monitored residual;

(iii) Having a design feed rate providing effective disinfection levels for peak demand conditions; and

(iv) Conforming to NSF standard 50 if disinfection chemical is other than gas chlorine.

(b) If disinfection equipment has adjustable output rate chemical feed of liquid solutions, the equipment shall:

(i) Feed under positive pressure in the recirculation system;

(ii) Provide a means for dosage adjustment; and

(iii) If the disinfection equipment is above pool water surface level, have provisions to prevent disinfectant solution siphoning when equipment is turned off.

(c) Solid tablets or granules may not be placed in skimmer basket.

(d) Rooms holding chlorine gas equipment must:

(i) Be above ground level;

(ii) Be constructed so all openings or partitions with adjoining rooms are sealed;

(iii) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the pool facility;

(iv) Have door(s) opening only outward to the out-of-doors; and

(v) Have a sign on the door exterior reading **DANGER CHLORINE** in large enough letters to be read twenty-five feet away.

(e) Chlorine rooms must have mechanical exhausting ventilation that includes:

(i) Air inlets located as far as possible from fan intakes to promote good air circulation patterns;

(ii) A minimum of one air change per minute in the chlorine room when fan is operating;

(iii) A remote switch outside the room or a door-activated switch to turn on fan before entering;

(iv) Suction for fan near the floor;

(v) Exhaust vents located to prevent chlorine contaminated air from being drawn into supply air; and

(vi) Screened chlorinator vents.

(f) Gas chlorine systems must:

(i) Be vacuum injection type, with vacuum-actuated cylinder regulators;

(ii) Provide integral backflow and antisiphon protection at the injector;

(iii) Have taring (net weight of cylinder gas) scales for determining chlorine weight; and

(iv) Have a means for automatic shutoff when water flow is interrupted.

(g) A self-contained breathing apparatus designed for use in chlorine atmospheres caused by chlorine leaks must be available in an area accessible to the operator outside the chlorine room. The apparatus must be maintained in accordance with department of labor and industry standards. If procedures are established for immediate evacuation and the owner has a written agreement with emergency service fire districts or other approved organizations within the area for promptly responding to chlorine leaks, then breathing protection is not required at the pool facility.

(h) Chlorine gas cylinders must:

(i) Be stored only in designated chlorine rooms;

(ii) Have an approved valve-stem cylinder wrench on the valve stem to shut the system down in an emergency event;

(iii) Be properly secured to prevent tipping;

(iv) Be tagged to indicate cylinders are empty or full; and

(v) Not exceed one hundred fifty pounds tare weight per cylinder.

(i) Owners shall ensure that chemical disinfectants are not hand-fed into pools actively in use. *Exception*, chemical disinfectants may be hand-fed on an emergency basis if no users are in the pool and the pool is tested to meet water quality standards before reentry.

(j) If ozone is provided as a supplemental disinfection process:

(i) When ozone is produced by corona discharge method, the area where the ozone is produced shall meet the requirements of (e) of this subsection, unless field tests demonstrate no hazardous off-gassing of product;

(ii) When ozone is produced by ultraviolet light, it may be allowed in the mechanical room provided there are no levels of off-gassing exceeding 0.05 ppm;

(iii) Provide an ozone detector and alarm with corona discharge ozone generators;

(iv) Provide sufficient contact chambers to prevent excess levels of ozone from entering the pool water; and

(v) Testing equipment must be provided to monitor levels in the water and the atmosphere immediately above the water and the room where the ozone is produced.

(k) If copper or copper/silver is provided as a supplemental disinfection process:

(i) The output rate and method of controlling process levels into the pool facility must be provided;

(ii) The system shall not have a detrimental effect on maintaining proper turnover rates for the pool; and

(iii) Testing equipment provided to monitor levels of copper and silver in the pool water.

(18) Chemical feeding equipment for pH control: Owners shall provide chemical feed equipment for pH control, with a means of automatic shutoff if water flow is interrupted, for:

(a) Swimming pools fifty thousand gallons or greater;

(b) Spa pools ten thousand gallons or greater; and

(c) All pools treated with caustic soda or carbon dioxide.

(19) Ventilation: Owners shall provide adequate ventilation (in conformance with ASHRAE standards for pools and decks) to maintain air quality and to prevent moisture buildup in indoor areas. Design considerations must include maintaining negative pressure in the pool and deck area; pro-

viding adequate total airflow for acceptable air distribution; and preventing short-circuiting of fresh air return to exhaust.

(20) Locker room and dressing rooms:

(a) Owners shall provide general use pool facilities with locker rooms and dressing rooms having:

- (i) Separate facilities for each gender constructed to block line of sight into locker rooms;
- (ii) Water impervious nonslip floors properly sloped to drains to prevent standing water;
- (iii) Easily cleanable walls, lockers, and benches (if provided);

(iv) Junctions between walls and floors coved for ease of cleaning; and

(v) Properly anchored lockers, (if provided), to prevent tipping.

(b) Owners shall provide limited use pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located more than one-quarter mile from any served living units.

(c) Owners shall provide general use recirculating spray pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located indoors.

(21) Restrooms, shower rooms, and plumbing fixtures:

(a) Owners shall provide general use pool facilities with restroom and shower room facilities having plumbing fixture types and numbers as described in Table ((031.3)) 031.5 of this section (swim and wading pool bathing loads and spa bather capacity are additive for determining total bather load). The pool facility design shall provide users easy access to restroom and shower facilities with minimum nonuser cross traffic.

(b) Owners shall provide general use pool facilities with:

(i) Hose bibs with vacuum breakers around pool decks at a maximum spacing of one hundred fifty feet; accessible to each locker room; and within equipment room at facilities fifteen hundred square feet or more;

(ii) A janitor's sink at indoor facilities with a pool of fifteen hundred square feet or more; and

(iii) An operable drinking fountain conforming to ASA requirements at facilities with a pool fifteen hundred square feet or more.

(c) Owners shall provide limited use pool facilities with:

(i) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table ((031.3)) 031.5 of this section, if bathing load exceeds eighty persons;

(ii) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table ((031.4)) 031.6 of this section, if bathing load is eighty persons or less;

(iii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet;

(iv) A hose bib accessible to each locker room; and

(v) A hose bib within each equipment room at facilities with a pool of fifteen hundred square feet or more.

Table ((031.3)) 031.5

Restroom Minimum Requirements* for General Use Pools
(Includes swimming, spa, and wading pools**)

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
Toilets up to 120	1/60	1/40
From 121-360	1/80	1/60
Over 360 add	1/150	1/100
Urinal up to 120	1/60	N/A
From 121-360	1/80	N/A
From 360 add	1/150	N/A
Showers up to 120	1/40	1/40
From 121-360	1/60	1/60
Over 360 add	1/100	1/100
Sinks up to 200	1/100	1/100
From 201-400	1/200	1/200
Over 400 add	1/400	1/400
Diaper changing station	1	1

* If sufficient supporting documentation is provided, restroom fixture numbers may be adjusted between the genders based on proposed use of the facility. (E.g., if the designer has experience and justification based on similar type facilities indicating that providing one additional shower for the women and one less for men would provide a sufficient number of fixtures to meet demands, this may be allowed.)

** If a general use spa or wading pool is the only pool at the facility, then a minimum of only one toilet, shower, and sink is required for each gender.

Table ((031.4)) 031.6
Restroom Minimum Requirements for Limited Use Pools
(Includes swimming, spa, and wading pools.)

POOLS WITH:	TOILETS	SHOWERS	SINKS	DRESSING ROOMS	DIAPER CHANGING STATION
Living units* within 100 feet and less than three stories	-	-	-	-	-
Living units > 100 feet but < 500 feet and less than 3 stories	1	1**	1	-	1
Living units within 1/4 mile and/or with three or more stories	1	1	1	-	1

Table ((031.4)) 031.6
 Restroom Minimum Requirements for Limited Use Pools
 (Includes swimming, spa, and wading pools.)

POOLS WITH:	TOILETS	SHOWERS	SINKS	DRESSING ROOMS	DIAPER CHANGING STATION
Living units greater than 1/4 mile	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)

* "Living units" means all the units the facility serves.

** A shower is required only if a spa is present.

(d) Owners shall provide general use recirculating spray pool facilities with:

(i) Separate restroom facilities for each sex containing at least one toilet and handwashing sink;

(ii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(iii) Additional plumbing fixtures, if indoors, conforming to the requirements for general use pools described in Table ((031.3)) 031.5 of this section.

(e) Owners shall provide limited use recirculating spray pool facilities with:

(i) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(ii) A restroom facility containing at least one toilet and one handwashing sink, if living units served are farther than one hundred feet away from the main pool.

(f) Restroom facilities must be located convenient to, and no further than one hundred feet away from, the main pool. They must have flush toilets provided with toilet tissue in dispensers and handwashing sinks including:

(i) Hot and cold or tempered water delivered through a mixing faucet with a maximum temperature of one hundred twenty degrees Fahrenheit;

(ii) Single service soap in a nonglass dispenser;

(iii) Single service towels or electric hand dryer; and

(iv) A minimum running water cycle of at least ten seconds if the faucets have self-closing valves.

(g) Shower facilities must be located convenient to, and no more than one hundred feet away from, the main pool. The facilities must have:

(i) A design allowing a full-body shower in the nude;

(ii) A design providing an enclosure confining water to the shower area;

(iii) Nonslip floor impervious to water with sufficient drains to prevent water from standing within the shower areas;

(iv) Running water delivered at a temperature between ninety degrees and one hundred twenty degrees Fahrenheit;

(v) Single service soap in a nonglass dispenser; and

(vi) Wall surfaces impervious to water up to shower head height.

(h) If owners limit the number of bathers within their facility and post and enforce the maximum bather load, owners may base the number of required plumbing fixtures on the posted maximum bather load.

(i) Owners shall dispose of all wastewater in a manner approved by the local health officer.

(22) **Diaper changing stations:** Owners shall provide a diaper changing station, including a handwashing sink conforming to the requirements in subsection (21)(f) of this section, accessible to all bathers, if children in diapers are allowed in the pool facility and the facility is:

(a) A general use pool facility; or

(b) A limited use pool facility located more than one hundred feet away from living units served.

(23) **Lighting:** Owners shall design and maintain pool facility lighting to a minimum level as described in Table ((031.5)) 031.7. Sufficient overhead and underwater lighting shall be maintained to clearly see the bottom of the pool at all times pool is in use. Owners shall provide protective shielding for all lighting fixtures above walking surfaces and pool areas.

Table ((031.5)) 031.7*
 Minimum Lighting Level Required at Water Recreation Facilities.

Location	Minimum Lighting Level
Indoor pool surface	30 foot candles
Outdoor pool surface*	10 foot candles
Pool Decks	10 foot candles
Locker rooms and mechanical rooms	20 foot candles

* Outdoor pool facilities, which are used in daylight hours only (before dusk) are not required to meet this standard.

(24) **Flow-through pools:** Flow-through pools may qualify for exceptions to recirculation if:

(a) Water supply is sufficient to provide the same turnover period specified for recirculation pools;

(b) The source water supply meets acceptable quality requirements and is subject to a disinfection method as described under WAC 246-260-111(3);

(c) The introduction of fresh treated pool water is accomplished by the same type of inlet and outlet design required for recirculation pools; and

(d) The pool water quality complies with WAC 246-260-111.

AMENDATORY SECTION (Amending WSR 05-09-004, filed 4/7/05, effective 5/8/05)

WAC 246-260-061 Special design and construction provisions for hotels and motels (transient accommoda-

tions) serving fewer than fifteen living units and for spas in individual hotel/motel rooms. (1) Owners are exempt from the requirements for design, construction, and equipment in WAC 246-260-031 and 246-260-051 for spa pools at limited use facilities serving less than fifteen living units, except for requirements listed in this section. Owners shall also ensure that chemicals are stored in a manner to minimize safety risks.

(2) The requirements in WAC 246-260-031 (1), (2), (3), (4), (5), (6), (8)(a) and (b), (d)(iii)((, (d))) and (v), (e) and (f), (9), (10), (15), (16), (17), and Table ((031-4) 031.6 apply to prefabricated spa pools at limited use facilities serving less than fifteen living units.

(3) The requirements in WAC 246-260-051 (2)(b), (d), (e), (4), (5)(b), (c), and (e) apply to prefabricated spa pools at limited use facilities serving less than fifteen living units.

(4) Spa pools that are drained, cleaned and refilled between patron use in individual hotel/motel rooms are exempt from these requirements. Spas that are not drained, cleaned and refilled between use shall at least:

(a) Conform with WAC 246-260-031(4) on barriers beyond the room itself, such that the guest room plus any associated lanai or deck may be considered an enclosure unit.

(b) Conform with WAC 246-260-031(17) on disinfection equipment and conform with water quality requirements of WAC 246-260-111 for disinfection and pH.

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-081 Spray pool design, construction, and equipment. For more general design and construction requirements that pertain to all pools, see WAC 246-260-031.

(1) **Walking surface.** A minimum four-foot wide walking surface shall extend around the perimeter of a spray feature sufficient that the spray will not exceed the walkway area in normal conditions including light wind conditions.

(2) **Pool structure.** Owners shall ensure each spray pool has:

(a) Pool surfaces with nonslip finishes impervious to water;

(b) Uniform pool floor slopes not exceeding one foot of a slope for every twelve feet of horizontal floor length;

(c) A source of water for the spray feature from an approved potable water supply;

(d) Water drained to waste disposed in a manner approved by local authorities or the department after use in the spray pool, unless it is recirculated with approved treatment as described in WAC 246-260-031; and

(e) The entire volume of water circulated through an approved treatment system every thirty minutes or less if water is recirculated.

(3) **Inlets ((and outlets)).** Owners shall ensure spray nozzles at each spray pool are designed and maintained to not inflict physical damage to bathers. Design and construction shall include evaluation of forces of the spray nozzle including velocity, pressure and total force in proximity to bathers' eyes and other body orifices.

(4) Outlets.

(a) Owners shall ensure outlet drains ((and recirculation drains)) are designed and maintained to provide sufficient capacity to prohibit water accumulation in each spray pool.

(b) ((Outlet drains in)) Piping must be designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps between the pump and the outlet drain.

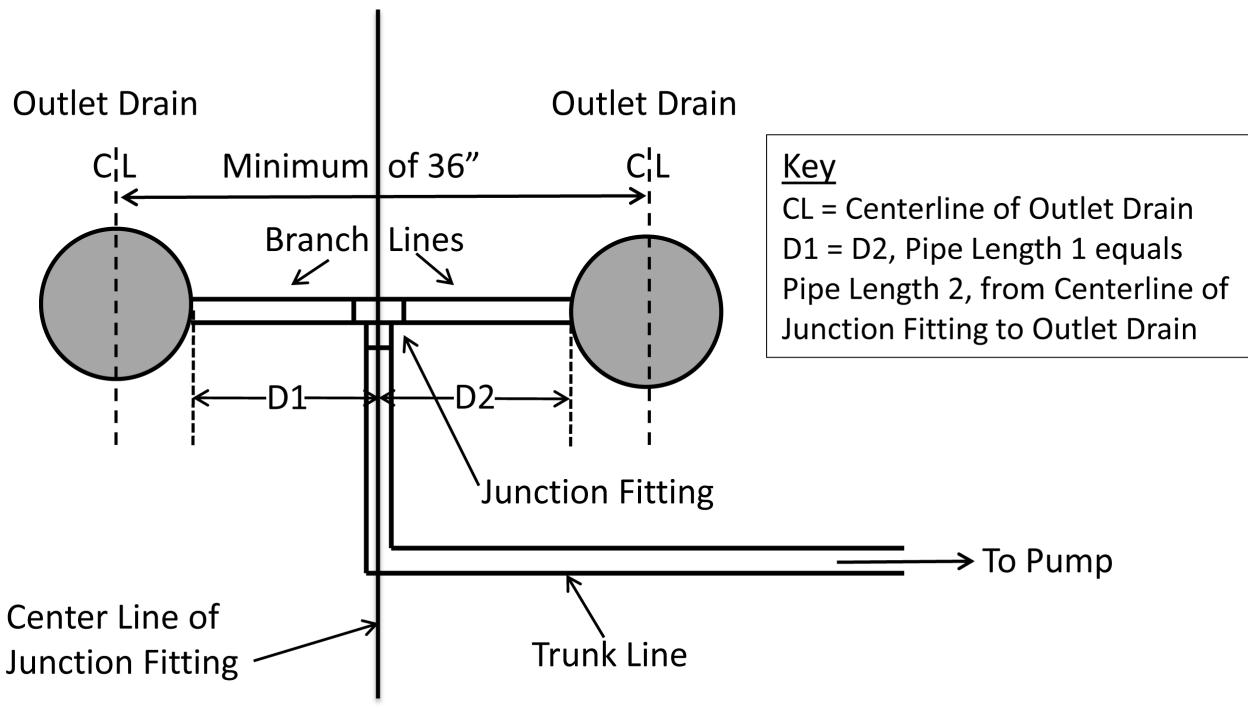
(c) Each spray pool must have two or more outlet drains that:

(i) ((Be)) Are located at the low point of the pool;

(ii) ((Have two or more main drains;)) Are located at least three feet apart, measured between the centers of the drain covers; and

(iii) ((Have openings that prevent the passage of a sphere over one half inch in diameter;)) Are manifolded with junction fittings placed in the middle of branch line piping between outlet drains, so that the length of branch line piping is equal on each side of the junction fitting, see Figure 081.1;

Figure 081.1
Outlet Drain Branch Line Piping Detail



(iv) ~~((Have drain grates that withstand forces of users; and~~

~~((v))) Have drain ((grates)) covers removable only with specific tools.~~

~~(d) Multiple outlet drains must be designed so that if one outlet drain becomes blocked, the remaining outlet drains are rated to at least one hundred percent of the maximum pump flow; see Table 081.1.~~

Table 081.1
Outlet Drain Flow Rating Requirements

	<u>Number of Outlet Drains per Recirculation System</u>			
	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Outlet drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of outlet drains.</u>	<u>100%</u>	<u>50%</u>	<u>33.3%</u>	<u>25%</u>

~~((e) Outlet drains to each spray pool recirculating pump, must have)) (e) Outlet drains that are accessible to pool users and submerged must:~~

~~(i) ((A total open grate area sized to prevent a suction hazard dangerous to users;)) Conform to the ASME A112.19.8 standard; and~~

(ii) ~~Have a maximum flow of one and one-half feet per second((, or net grate area of outlet four times or more the discharge pipe area; and~~

~~(iii) Manifolding a minimum of three feet apart where drains are piped directly to a pump)) through the cover.~~

~~(f) Outlet drains that are accessible to pool users and not submerged must have:~~

~~(i) Openings that prevent the passage of a sphere over one-half inch in diameter; and~~

~~(ii) Drain covers that withstand forces of users.~~

~~((4)) (5) **Emergency equipment.** No later than June 1, 2008, owners of existing pools with single main drains shall install emergency equipment to shut off all pumps hooked to the recirculation lines for the pools. This emergency equipment must be placed within twenty feet of the pool and marked with an emergency shutoff sign. The shutoff switch must include an audible alarm which can be heard by those in the area, or the switch must have an alarm that goes to a point where staff is always present during the periods the pool is open.~~

(a) Pools that include dual main drains meeting the requirements of this section, or other acceptable methods of providing equivalent protection to the emergency shutoff switch, are exempt from this requirement.

(b) The owner shall check the shutoff switch at least twice annually to determine it is properly operating.

(c) The department will develop a guidance document to aid owners and designers in potential options to the emergency shutoff switch and audible alarm.

AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

WAC 246-262-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced first aid" means a course of instruction recognized by the American Red Cross, department of labor and industries, the U.S. Bureau of Mines, or fire services training program.

(2) "ANSI" means American National Standard Institute.

(3) "Anti-entrapment system" means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:

(a) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;

(b) Suction limiting vent system with a tamper-resistant atmospheric opening;

(c) Gravity drainage system that utilizes a collector or balancing tank; and

(d) Drain disablement that eliminates the use of suction outlets.

(4) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with chapter 246-262 WAC.

((44)) (5) "ARC" means American Red Cross.

((55)) (6) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.

(7) "ASME" means the American Society of Mechanical Engineers;

(8) "ASME A112.19.8 standard" means the ASME A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a-2008 Addenda and the ASME A112.19.8b-2009 Addenda.

((66)) (9) "ASTM" means American Society for Testing Material.

((77)) (10) "Attendant" means a person trained to operate an attraction and control the users in a safe orderly manner.

((88)) (11) "Attraction or ride" means any of the specific types of recreational facilities involving partial or total immersion or intentional contact with the water designated for public recreational use.

((99)) (12) "Biomechanics" means the study of the human body as a system operating under the laws of Newtonian mechanics and the biological laws of life.

((100)) (13) "Board" means the state board of health.

((111)) (14) "Boogie or mini-surf board" means any semirigid device used in a wave pool for flotation or as a riding device.

(15) "Branch line" means suction piping between a junction fitting and a suction outlet.

((122)) (16) "Centerline" means the path defined by geometric midpoints of a component or structure, generally used in consideration of the slide path in flume rides.

((13)) (17) "CNCA" means Council for National Cooperation in Aquatics.

(18) "Communication system" means any combination of devices permitting the passage of or exchange of messages between park operating personnel and between operating personnel and users. Systems can include, but are not limited to, two-way radios, hardwired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

((14)) (19) "Contaminant" means any physical, chemical or biological substance present in the RWCF water which may adversely affect the health or safety of the user and/or the quality of the water.

((15)) (20) "CNCA" means Council for National Cooperation in Aquatics.

((16)) (20) "Cross-connection" means any physical arrangement connecting:

(a) A potable water system directly or indirectly, with anything other than another potable water system; or

(b) A RWCF to any potable or nonpotable water source capable of contaminating either the RWCF or potable water source as a result of backflow.

((17)) (21) "Department" means the department of health.

((18)) (22) "Discharge section" means the component or components making up the exit of the water slide, water tube, inner tube ride, speed slide, ramp slide, drop slide or drop tube, or kiddie flume. These components are the elements controlling the final direction and speed of the user.

((19)) (23) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or attraction segment where users enter above pool water level.

((20)) (24) "Drop slide or drop tube ride" means a sloped trough, chute, or tube exiting the user above the pool operating water level.

((21)) (25) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW in Washington state.

((22)) (26) "Entry access points" means the areas where users enter an attraction.

((23)) (27) "Entry rate" means the frequency at which users are permitted access to the attraction.

((24)) (28) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.

(29) "Ergonomics" means a multidisciplinary activity dealing with the interactions between humans and their environment plus the traditional environmental elements atmosphere, heat, light, and sound, as well as objects with which the user comes in contact.

((25)) (30) "FINA" means Federation Internationale de Natation Amaueur.

((26)) (31) "Flume or tube entry" means the area at which users enter a water slide, water tube, inner tube ride, speed slide, drop slide, drop tube, or kiddie flume.

((27)) (32) "fps" means feet per second.

((28)) (33) "gpm" means gallons per minute.

((29)) (34) "IAAPA" means International Association of Amusement Parks and Attractions.

((30)) (35) "Injury or illness report" means the written record of all facts regarding an injury or illness associated with the RWCF.

((31)) (36) "Inner tube ride" means an attraction where users ride inner tube-like devices through a series of chutes, channels, flumes, and pools.

((32)) (37) "Innovative recreational water contact facility" means any type of RWCF currently unregulated.

((33)) (38) "Intermediate pool" means any pool between the entry and exit pools in attraction using a series of pools.

((34)) (39) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

(40) "Kiddie flume or tube attraction" means a flume, chute, or tube designated for and restricted to use by small children.

((35)) (41) "Lifeguard" means an individual currently certified by red cross in advance lifesaving or lifeguard training, or YMCA senior lifesaver, or equivalent certification through the royal Canadian lifeguard services.

((36)) (42) "Lifeguard station" means the designated work station of the lifeguard.

((37)) (43) "Local health officer" means the health office of the city, county, or city-county department or district or a representative authorized by the local health officer.

((38)) (44) "Main drain" means a submerged suction outlet for transferring water from a recreational water contact facility.

(45) "mg/l" means milligrams per liter.

((39)) (46) "Multiactivity pool" means a pool with more than one type of attraction (i.e., an adult activity pool with a series of tubes, chutes, cable rides, etc., intended for use by individuals with specific swimming abilities).

((40)) (47) "NSF" means National Sanitation Foundation.

((41)) (48) "NSPI" means National Spa and Pool Institute.

((42)) (49) "Operating levels" means water levels maintained within attractions during use for proper operation of facility and for controlling safety and sanitation.

((43)) (50) "Operations" means all aspects of a RWCF, which must be controlled to make the facility safe, healthy, and usable for the purpose intended.

((44)) (51) "Owner" means a person owning and responsible for a RWCF or authorized agent.

((45)) (52) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

((46)) (53) "Ponding" means a condition where water fails to drain from walking surfaces.

((47)) (54) "ppm" means parts per million.

((48)) (55) "Primary zone of visual coverage" means the area assigned to a lifeguard or attendant for primary visual surveillance of user activity.

((49)) (56) "Radius of curvature" means the radius arc which denotes the curved surface from the point of departure

from the vertical sidewall (springline) of the pool to the pool bottom.

((50)) (57) "Ramp slide" means a slide allowing one or more users to slide in unison down a straight incline to a run-out or a receiving pool.

((51)) (58) "Recirculation filter water" means water which is recirculated by the RWCF for treatment purposes, i.e., filtration and disinfection.

((52)) (59) "Response time" means elapsed time between bather distress and initiation of rescue assistance by a lifeguard (or attendant where applicable).

((53)) (60) "RWCF" means recreational water contact facility which is an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water and includes, but is not limited to, water slides, wave pools, and water lagoons.

((54)) (61) "Secretary" means the secretary of the department of health.

((55)) (62) "Serious injury" means any injury requiring admission to a hospital.

((56)) (63) "Speed slide or speed tube" means a sloped trough, flume, tube, or roller track having long straight and/or steep drops where users sustain speeds of twenty miles per hour or more.

((57)) (64) "Springline" means the point from which the pool wall breaks from vertical and begins its arc in the radius of curvature (for coved construction) to the bottom of the pool.

((58)) (65) "Suction outlet" means a fitting; fitting assembly and related components, including the sump or bulkhead fitting, cover, and hardware that provides a localized low pressure area for the transfer of water from a recreational water contact facility. Types of suction outlets include main drains and equalizer line outlets.

(66) "Surfboard" means a rigid device used in a wave pool for riding.

((59)) (67) "Tail coverage" means providing insurance coverage for a given period of time for discovery of claims made after the policy term for "claims made" type of insurance.

((60)) (68) "Total turnover" means the time it takes for the pool attraction water volume to be recirculated as a sum of the flows from treatment turnover and attraction recirculation systems turnover.

((61)) (69) "Treatment turnover" means the minimum time necessary to circulate the entire attraction water volume through the recirculation filter system.

((62)) (70) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

(71) "T.U." means turbidity unit as measured by the nephelometric method.

((63)) (72) "Wading activity pool" means a pool or area less than twenty-four inches in total water depth with activities intended for younger children.

((64)) (73) "Walking surface" means any direct access surface to the attractions or change rooms where the user will

be in bare feet. Areas set aside for picnicking, sunbathing, and lounging are excluded.

((65)) (74) "Water slide or water tube" means a sloped trough-like flume or tube structure of varying slope and direction using water as a lubricant and/or method of regulating the rider speed.

((66)) (75) "Water treatment operator" means the person appointed to operate the mechanical equipment and perform related water quality monitoring for proper operation of the physical facility.

((67)) (76) "Wave pool" means a recreational pool producing waves which usually begin at the deep end and proceed toward and dissipate at the shallow end.

((68)) (77) "WWA" means World Waterpark Association.

AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

WAC 246-262-060 General design, construction, and equipment. (1) Owners shall locate RWCFs to:

(a) Minimize pollution by dust, smoke, soot, and other undesirable substances;

(b) Eliminate pollution from surrounding surface drainage; and

(c) Ensure pools within the RWCF are more than fifteen feet from any structure, object, or land formation (i.e., pump-house, tree, etc.), which would provide a user with the opportunity to jump from such a structure into the pool. This does not include any barriers provided to prevent unauthorized access to pool or segments of attractions which enter pool.

(2) Owners shall use only materials in the structure and equipment which are nontoxic, durable, inert, impervious to water, and easily cleaned.

(3) Owners shall design and maintain walking surfaces which are:

(a) Sloped a minimum one-fourth inch per foot;

(b) Of a nonslip finish;

(c) Equipped with sufficient drains to prevent standing water;

(d) Free of resilient coverings, e.g., carpeting; and

(e) At least four feet in width.

(4) Owners shall provide adequate barrier protection to prevent unauthorized access including:

(a) In outdoor facilities, a barrier six feet or more in height with:

(i) Openings, holes, or gaps not to exceed four inches except openings protected by gates or doors; and

(ii) Lockable gates and entrances either regulated during periods of use or provided with a self-closing, self-latching mechanism a minimum of forty-two inches from the ground.

(b) In indoor facilities, suitable barriers to prevent access by unauthorized individuals or pool access by unattended small children.

(5) Owners shall ensure that pools:

(a) Comply with all provisions of chapter 246-260 WAC where pool facilities are a separate attraction;

(b) Have surfaces with:

(i) Materials complying with subsection (2) of this section;

(ii) Watertight and nonabrasive construction;

(iii) Nonslip finish where users are walking; and

(iv) White or light color finish not obscuring the view of objects or surfaces.

(c) Are dimensionally designed to provide for the safety of the user and circulation of the water including, but not limited to:

(i) Absence of protrusions, extensions, means of entanglement, or other obstruction which can cause entrapment or injury;

(ii) Construction tolerances conforming with current ANSI public pool standards;

(iii) Uniform pool floor slopes as follows:

(A) Not exceeding one foot of drop in seven feet of run for pools serving as landing or exiting pools, where total water depth is less than forty-eight inches; and

(B) Providing a maximum slope of one foot of drop in twelve feet of run up to a depth of five and one-half feet in pools where users enter and participate in extended activities.

(iv) Vertical walls for a minimum distance noted in Table 4 of this section, which may be curved (not to exceed allowable radius) to join the floor.

(A) Vertical means walls not greater than eleven degrees from plumb.

(B) Coving or portion of the side wall of a diving area in the pool shall conform as described in subsection (5)(c)(vi) of this section.

(C) In new construction or alterations to existing construction, ledges are prohibited.

(D) Requirements in subsection (5)(c) of this section do not apply to spas.

(v) A maximum intrusion beyond the vertical (as defined in subsection (5)(c)(iv)(A) of this section) with any configuration not to exceed a transitional radius from wall to floor where floor slopes join walls and which:

(A) Has its center of radius no less than the minimum vertical depth specified in Table 4 of this section below the water level;

(B) Has arc of radius tangent to the wall; and

(C) Has a maximum radius of coving (or any intrusion into the pool wall/floor interface) determined by subtracting the vertical wall depth from the total pool depth.

TABLE 4
MAXIMUM RADIUS COVING OR POOL INTRUSION
DIMENSIONS BETWEEN POOL FLOOR AND WALL*

Pool Depth 2'0" 2'6" 3'0" 3'6" 4'0" 4'6" 5'0" >5'0"

Minimum Slide Wall

Vertical Depth 1'6" 1'10" 2'2" 2'6" 2'10" 3'2" 3'6" >3'6"

Maximum Radius

of Curvature	6"	8"	10"	12"	1'2"	1'4"	1'6"	**Maximum radius equals pool depth minus the vertical wall depth
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Note:

* For pool depths which fall between the depths listed, values can be interpolated.

** Radius of coving cannot intrude into pool within diving envelope or deep water entry area for attractions entering above pool water level.

(vi) Provision of diving envelopes in pools or areas of pools designated for diving activities to include:

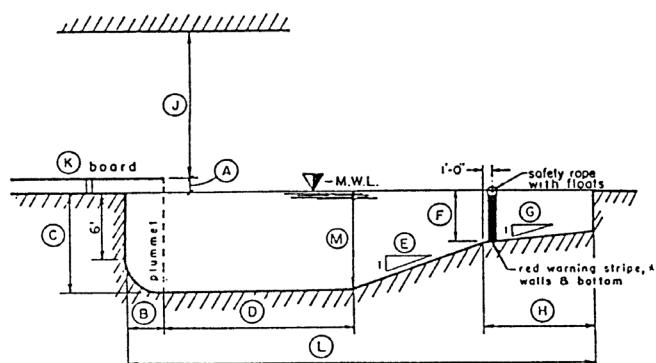
(A) A diving envelope of no less than the CNCA standard configuration* noted in Figure 1 of this section in areas where user would enter from deck level, diving board, or platform at a height of less than one-half meter (twenty inches).

Note:

* This requirement is based on a standard described in CNCA publication "Swimming Pools: a Guide to their Planning, Design, and Operation" 1987. Fourth edition. Human Kinetics Publisher, Inc., Champaign, Illinois. Figure 8.1

FIGURE 1:

Minimum dimensions for pools with provision for diving from deck level or providing boards or platforms at a height less than one-half meter.



Dimension	Minimum	Preferred or Maximum
A Height of board above water	20 in.	20 in.
B Board overhang	2 ft 6 in.	3 ft
C Depth of water at plummet	9 ft	10 ft*
D Distance from plummet to start of upslope	16 ft	18 ft*
E Inclination of upslope of bottom	1:3	

Dimension	Minimum	Preferred or Maximum
F Depth of water at breakpoint	4 ft 6 in.	
G Slope of bottom in shallow portion of pool	1:12	1:15*
H Length of shallow section of pool	8 ft	14 ft*
I Distance to any overhead structure	13 ft	15 ft*
K Board length		12 ft
L Length of pool	40 ft	50 ft*
M Dimension not less than C minus	6 in.	

Note:

* Values with asterisks are not to be considered as maximums.

** Warning stripe at break point may be of any contrasting color.

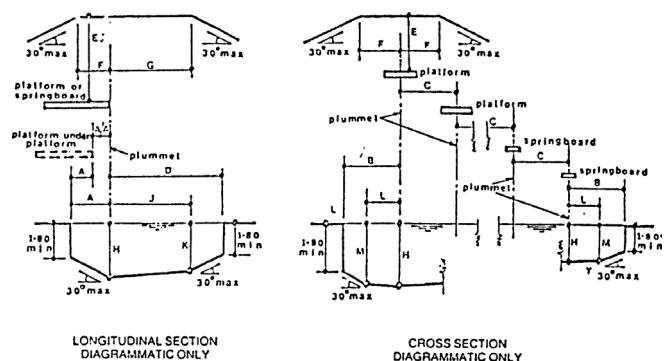
(B) A diving envelope of no less than the FINA standard configuration** noted in Figure 2 of this section in areas where user would enter from diving board or platform at a height of one-half meter (twenty inches) or greater.

Note:

** This requirement is based on a standard described in FINA publication "FINA Handbook - 1986-1988." Constitution and rules governing swimming, diving, water polo, and synchronized swimming, 1986-1988. Edited by E. Allen Harvey, Vancouver, Canada VGN 3R6, Section D, pp. 114-115.

FIGURE 2:

Minimum dimensions for pools with boards or platforms at a height of one-half meter or more.



	Dimensions	SPRINGBOARD				PLATFORM								
		1 Metre		3 Metres		1 Metres		3 Metres		5 Metres		7.5 Metres		
FINA	are in Metres	1 Metre	3 Metres			1 Metres		3 Metres		5 Metres		7.5 Metres		10 Metres
DIMENSIONS FOR	LENGTH	4.80	4.80			4.50		5.00		6.00		6.00		6.00
DIVING FACILITIES	WIDTH	0.50	0.50			0.60		1.50		1.50		1.50		2.00
Revised to 1st Jan 1987	HEIGHT	1.00	3.00			0.60-1.00		2.60-3.00		5.00		7.50		10.00
	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT
A From plummet BACK TO POOL WALL	DESIGNATION	A-1		A-3		A-1P1		A-3P1		A-5		A-7.5		A-10
	MINIMUM	1.80		1.80		0.75		1.25		1.25		1.50		1.50
A/A From plummet BACK TO PLATFORM Plummet directly below	DESIGNATION								AA5/1		AA7.5/3/1		AA10/5/3/1	
	MINIMUM								1.50		1.50		1.50	
B From plummet to POOL WALL AT SIDE	DESIGNATION	B-1		B-3		B-1p1		B-3p1		B-5		B-7.5		B-10
	MINIMUM	2.50		3.50		2.30		2.90		4.25		4.50		5.25
C From plummet to ADJACENT PLUMMET	DESIGNATION	C-1/1		C-3/3/1		C-1/1p1		C-3/1P1/3p1		C-5/3/1		C-7.5/5/3/1		C-10/7.5/5/3.
	MINIMUM	2.40		2.60		1.65		2.10		2.50		2.50		2.75

	Dimensions	SPRINGBOARD				PLATFORM								
		1 Metre	3 Metres	1 Metres		3 Metres		5 Metres		7.5 Metres		10 Metres		
FINA	are in Metres			D-1p1		D-3p1		D-5		D-7.5		D-10		
D From plummet to POOL WALL AHEAD	DESIGNATION	D-1		D-3										
	MINIMUM	9.00		10.25		8.00		9.50		10.25		11.00		
E On plummet, from BOARD TO CEILING	DESIGNATION		E-1		E-3		E-1p1		E-3p1		E-5		E-7.5	
	MINIMUM		5.00		5.00		3.50		3.50		3.50		3.50	
F CLEAR OVERHEAD behind and each side of plummet	DESIGNATION	F-1	E-1	F-3	E-3	F-1p1	E-1p1	F-3p1	E-3p1	F-5	E-5	F-7.5	E-7.5	
	MINIMUM	2.50	5.00	2.50	5.00	2.75	3.50	2.75	3.50	2.75	3.50	2.75	3.50	
G CLEAR OVERHEAD ahead of plummet	DESIGNATION	C-1	E-1	C-3	E-3	G-1p1	E-1p1	G-3p1	E-3p1	G-5	E-5	G-7.5	E-7.5	
	MINIMUM	5.00	5.00	5.00	5.00	5.00	3.50	5.00	3.50	5.00	3.50	5.00	6.00	
H DEPTH OF WATER at plummet	DESIGNATION		H-1		H-3		H-1p1		H-3p1		H-5		H-7.5	
	MINIMUM		3.50		3.80		3.30		3.60		3.80		4.50	
J DISTANCE AND DEPTH K ahead of plummet	DESIGNATION	J-1	K-1	J-3	K-3	J-1p1	K-1p1	J-3p1	K-3p1	J-5	K-5	J-7.5	K-7.5	
L DISTANCE AND DEPTH	MINIMUM	5.00	3.40	6.00	3.70	5.00	3.20	6.00	3.50	6.00	3.70	8.00	4.40	
M each side of plummet	DESIGNATION	L-1	M-1	L-3	M-3	L-1p1	M-1p1	L-3p1	M-3p1	L-5	M-5	L-7.5	M-7.5	
	MINIMUM	1.50	3.40	2.00	3.70	1.40	3.20	1.80	3.50	4.25	3.70	4.50	4.40	
N MAXIMUM SLOPE TO REDUCE DIMENSIONS beyond full require- ments	POOL DEPTH CEILING HT	30 degrees 30 degrees	NOTE	Dimensions C (plummet to adjacent plummet) apply for Platform with widths as detailed. For wider Platforms increase C by half the additional width(s)										

(d) Have adequate handholds around the perimeter in pools designed for extended swimming and bathing activity and excluding wave pools; and

(e) Stairs, ladders, or stepholes with:

(i) Stairs, when provided, meeting the following construction requirements:

(A) Treads of a nonslip finish;

(B) Stair tread edges colored to contrast with the color of the pool and clearly visible to the users;

(C) Recessed in pool areas used for lap swimming or provided with wave action; and

(D) Equipped with handrails extending over the edge of the deck.

(ii) Ladders or stepholes which:

(A) Furnish exit from pools greater than four feet in depth except in landing pools bringing the user toward a shallow area after entering the water;

(B) Are spaced a minimum of one for every fifty feet of pool perimeter greater than four feet deep;

(C) Are provided at both sides of the deep end in pools over thirty feet in width; and

(D) Are equipped with a handrail at the top of both sides extending over the coping or edge of the deck.

(iii) User access at the shallow end of pool.

(6) Owners shall ensure treatment turnover at rates no less than designated as follows:

(a) In receiving pools for water slides, water tubes, inner tube rides, speed slides or tubes, drop slides or tubes, and kidie flume slides, treatment turnover time can be based on any of the following:

(i) Total attraction volume in one-hour period;

(ii) Treatment turnover equals design peak usage (maximum users per hour) expressed in gpm;

(iii) A rate of one hour for 20,000 gallons per two or less attraction segments. Treatment turnover times may increase proportionately for larger pool volumes per two or less attraction segments;

(iv) Alternative methods where provisions to reduce contaminants are justified to the satisfaction of the department or local health officer; and

(v) Treatment turnover times not to exceed six hours.

(b) For wave pools, a minimum treatment turnover time of two hours; and

(c) For activity pools, a minimum treatment turnover time of four hours.

(7) Owners shall provide pool inlets which are:

(a) Submerged and located to produce uniform circulation of water and chemicals throughout the pool; and

(b) Located on the bottoms of pools greater than two thousand five hundred square feet, unless otherwise justified by the engineer to the satisfaction of the department or local health officer.

(8) Except as provided in (d) and (e) of this subsection owners shall provide pool outlets with:

(a) Overflow and main drain systems with each designed to carry one hundred percent of total recirculation filter flow;

(b) Overflow outlets that have:

(i) Design to maintain a minimum of sixty percent of filter recirculation flow at all times;

(ii) An overflow channel on the pool perimeter to promote uniform circulation and skimming action of the upper water layer for pools greater than twenty-five hundred square feet, with:

(A) Design preventing matter entering channel from returning to the pool;

(B) Dimensions minimizing the hazard for bathers, such as catching arms or feet in an overflow channel;

(C) 0.01 foot slope per foot or more;

(D) Drains sufficiently spaced and sized to collect and remove overflow water to return line to filter where applicable;

(E) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow equivalent to one-fifth of the balancing tank expressed in gallons per minute.

(iii) Skimmers, when used on pools up to twenty-five hundred square feet, if:

(A) Demonstrated to operate properly under design conditions;

(B) Turbulence is not expected to interfere with operation;

(C) Maximum flow rate through skimmers does not exceed four gpm per inch of weir;

(D) Devices are recessed in the wall of the pool so that no part protrudes beyond the plane of the wall into the pool;

(E) The skimmer is equipped with a device to prevent air lock in the recirculation suction line (i.e., an equalizer line). If equalizer lines are used they must be protected with suction outlets that conform to the ASME A112.19.8 standard. Pools with an equalizer line that can be a sole source of suction must also be equipped with an anti-entrapment system; and

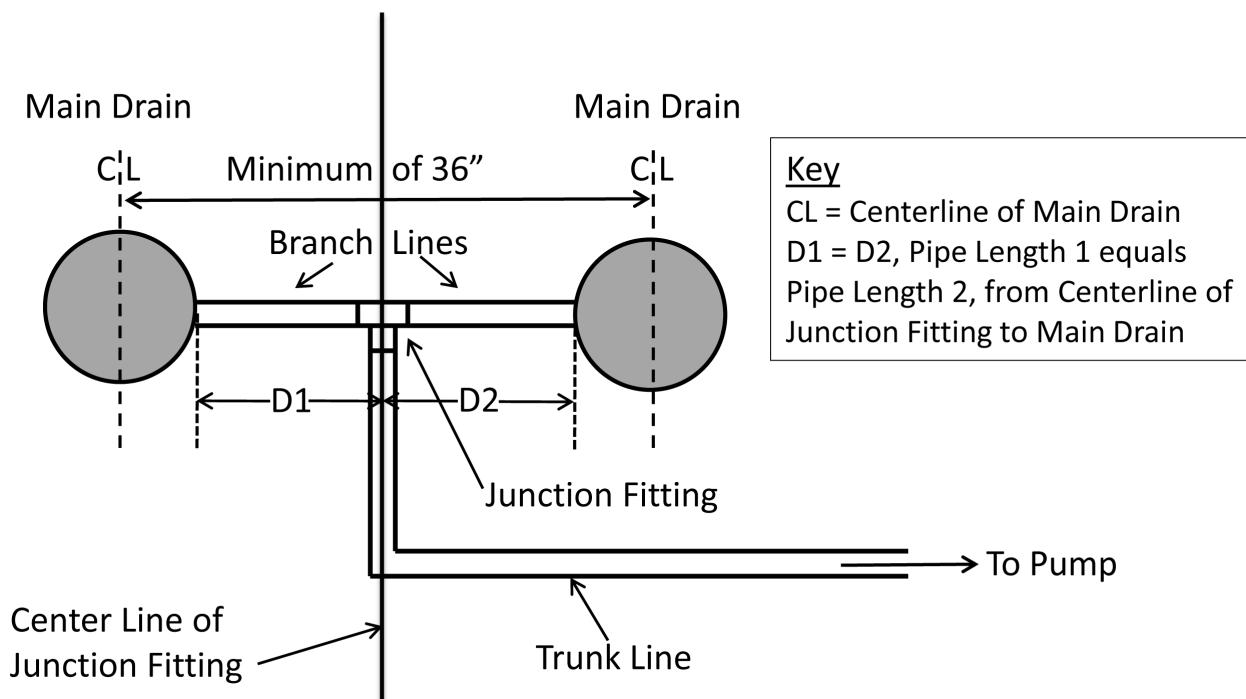
(F) The skimmer is equipped with a removable and cleanable screen designed to trap large solids.

(iv) Sidewall channels, when used on pools up to twenty-five hundred square feet, which accept the total recirculation volume of the pool through the upper side of the pool if:

FIGURE 3:

Main Drain Branch Line Piping Detail.

(iii) Have a minimum of two main drains spaced ((not



~~further than twenty feet apart nor closer than six) at least three feet ((or spaced as far as possible from each other in pools less than six feet linear floor distance)) apart, measured between the centers of the drain covers;~~

((iii) Total open area of grates preventing a suction or entrapment hazard which could be dangerous to user;

(iv) Flat grate drains having:

(A) Overall flow through the channel exceeds four times the treatment recirculation rate;

(B) Design of channel prevents entrapment of the user;

(C) Openings of any screens have less than one-half inch slots;

(D) Channel openings do not allow access beyond the pool, except with the use of specific tools requiring their opening;

(E) Open area of ((grates)) screens prevent a suction or entrapment hazard which could be dangerous to the user; and

(F) The channel provides an action pulling water from the top of the pool to remove floatable debris and oils.

(c) Main drains in all pools ((with)) must:

(i) ((Location)) Be located at the low points of the pool;

(ii) Have piping that is manifolded with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting; see Figure 3

(A) Maximum flow of 1.5 feet per second; or

(B) Net area of outlet being at least four times the area of the discharge pipe;

(v) Maximum flow of four feet per second in anti-vortex drains;

(vi) Openings not allowing a sphere over one half inch in diameter to pass;

- (vii) Grate design to withstand forces of users;
- (viii) Grates removable only with specific tools; and
- (ix) (iv) Conform to the ASME A112.19.8 standard;
- (v) Have covers with a maximum flow of 1.5 feet per second;
- (vi) Be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 5
- (vii) Have means to control flow from recirculation pump or balancing tank.

TABLE 5
MAIN DRAIN FLOW RATING REQUIREMENTS

	Number of Main Drains Per Recirculation System			
	2	3	4	5
<u>Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.</u>	<u>100%</u>	<u>50%</u>	<u>33.3%</u>	<u>25%</u>

(d) Existing recreational water contact facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met;

(e) New recreational water contact facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met.

(9) Owners shall maintain recirculation flow which:

(a) Does not exceed six feet per second in suction or valved discharge side of pump; and

(b) Does not exceed ten feet per second in open discharge pipes on the pressure side of the pump or filter discharge. This limit does not apply to the return inlet and the last two feet of pipe leading to the inlet.

(10) Owners shall provide a surge chamber or surge area in RWCFs with an entry pool to:

(a) Accommodate at least two minutes of the total turnover; and

(b) Maintain proper water levels for treatment and operation of the attraction.

(11) Owners having RWCFs with overflow channels requiring balancing tanks shall:

(a) Maintain volume equivalent to fifteen times maximum bathing load expressed in gallons; and

(b) Increase capacity as necessary to provide volume for make-up water and to prevent air lock in the pump suction line.

(12) Owners shall have and maintain recirculation pumps with adequate capacity to:

(a) Provide design flows and pressure for recirculation of the RWCF water over the entire operating pressure of the filter;

(b) Allow proper capacity for backwashing of filters when specified; and

(c) Have self-priming capability when installed above the pool water level.

(13) Where pumps precede the filter, owners shall install hair and lint strainers, which shall:

(a) Be located upstream of recirculation pumps;

(b) Be of corrosion-resistant material sufficiently strong to prevent collapse when clogged;

(c) Have an operable cover; and

(d) Provide valving to isolate the strainer when located below pool water level.

(14) Owners shall provide valves at appropriate locations to allow isolation and maintenance of equipment.

(15) Owners shall provide equipment rooms which:

(a) Enclose pumps, disinfection equipment, filters, and other electrical and mechanical equipment and associated chemicals;

(b) Provide adequate working space and access to perform routine operations;

(c) Provide lighting and ventilation of the equipment room; and

(d) Are not accessible to the public.

(16) Owners shall ensure the source of make-up water and associated piping in the RWCF:

(a) Provides sufficient quantity to replace daily losses from the pool;

(b) Comes from a supply conforming with chapter 246-290 WAC; and

(c) Prevents cross-connections using a minimum air gap of two pipe diameters or approved backflow prevention devices between the make-up water source and the RWCF attraction water or waste water.

(17) Owners shall equip RWCFs with filtration equipment which:

(a) Meets the applicable standards of NSF or equivalent;

(b) Uses acceptable types and filter rates described in Table ((5)) 6 of this section:

TABLE ((5)) 6
FILTER TYPES AND ACCEPTABLE RATES

Type of Filter	Range of Acceptable Filter Rate Expressed in gpm/sq. ft.	
	Minimum	Maximum*
Sand		
Rapid & pressure	—	3
Pressure high rate	10	18
Vacuum high rate	10	18
DE	Continuous feed	Manual feed
Vacuum	0.8	1.0
Pressure	1.0	1.35
Cartridge**		
Applied in temperature ranges:		

TABLE ((5)) 6
FILTER TYPES AND ACCEPTABLE RATES

Type of Filter	Range of Acceptable Filter Rate Expressed in gpm/sq. ft.	
	Minimum	Maximum*
<95°F.	—	0.375
>95°F.	—	0.188

Note:

* Filters sized at maximum application rate shall use flow control valves.

** Cartridge filters shall have a nominal micron rating of twenty microns or less.

(c) Has pressure or vacuum gauges for measuring loss of head (pressure) through the filter with minimum of one gauge preceding and one gauge following the filter;

(d) Has a flow indicator to measure treatment turnover; and

(e) Has means of discharging filter backwash to waste with:

(i) Discharge in a manner not creating a public nuisance;
(ii) Disposal in accordance with applicable local law or regulation;

(iii) Minimum air gap of two pipe diameters to prevent cross-connection from waste discharge and recirculation system piping;

(iv) Discharge receptor and piping of sufficient size to accept backwash water and prevent flooding; and

(v) Provisions to monitor filter effluent during backwash.

(18) Owners shall provide disinfection equipment which:

(a) Provides a continuous and effective residual of disinfectant in the water;

(b) Uses a disinfectant with a residual that is easily monitored;

(c) Conforms with NSF standards when liquid or solid feed materials are used;

(d) Has a design feed rate which will provide effective disinfection levels when RWCFs are in use;

(e) Meets the following conditions if chlorine gas is used:

(i) Chlorine rooms shall:

(A) Be above ground level;

(B) Be constructed so all openings or partitions with adjoining rooms are sealed;

(C) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the RWCF;

(D) Have door opening outward only and to the out-of-doors.

(ii) Mechanical exhaust ventilation of the chlorine room including:

(A) Air inlet located as far as possible from fan intake to promote good air circulation patterns;

(B) Minimum of one air change per minute in the chlorine room when fan is operating;

(C) A remote switch outside the room or a door-activated switch to turn on fan prior to entering;

(D) Suction for fan near the floor; and

(E) Exhaust for fan and chlorinator vent located to prevent contaminating air intakes or prevent undue hazard for the users of the RWCF.

(iii) Gas chlorine systems which:

(A) Are vacuum injection type, with vacuum actuated cylinder regulators; and

(B) Provide adequate-sized backflow and anti-siphon protection at the ejector.

(iv) Breathing protection available in an accessible area for the operator outside of the chlorine room including:

(A) Instructions about limitations with chlorine concentrations and concentrations of oxygen if chlorine-type canister masks are used; and

(B) Self-contained breathing apparatus designed for use in a chlorine atmosphere as preferred equipment for working with chlorine leaks.

(v) Means for automatic shutoff when the recirculation filter pump is off or flow to the pool is interrupted;

(vi) Chlorine gas cylinders shall:

(A) Be stored only in chlorine rooms; and

(B) Not exceed one hundred fifty pounds tare weight per cylinder; except, wave pools, where one-ton cylinders may be used. Only a single, one-ton cylinder shall be stored on the premise at any time.

(19) Owners applying chemicals other than disinfectant shall provide chemical feed equipment with:

(a) Adequate size and design to allow routine cleaning and maintenance;

(b) Materials resistant to action of the chemicals to be used; and

(c) Means for automatic shut off when the recirculation filter pump is off or flow to the pool is interrupted.

(20) Owners shall have testing equipment to provide means for measuring disinfectant residuals, pH, alkalinity, and any other chemicals used routinely in the RWCF water. In pools where compressed chlorine gas is used, means to detect leaks shall be provided, i.e., use of proper strength ammonia vapor.

(21) Owners shall provide easily accessible change room facilities at all RWCFs with:

(a) Dressing rooms, showers, toilets, urinals, and sinks;

(b) Change room design including:

(i) Separate facilities for both sexes;

(ii) Floors of a nonslip finish with suitable drains;

(iii) Junctions between walls and floors coved for ease of cleaning;

(iv) Adequate ventilation to prevent build-up of moisture in the facility; and

(v) Provisions to minimize cross traffic with nonusers.

(c) Plumbing fixtures as described in Table ((6)) 7 of this section.

TABLE ((6)) 7
MINIMUM PLUMBING FIXTURE REQUIREMENTS
BASED ON MAXIMUM PEAK PERIOD OCCUPANCY

Type of Fixture	Occupancy/Sex	Number of Fixtures Required Per Occupancy Load	
		Male	Female
1. Toilets	First 600	1/200	1/100
	Portion		
	exceeding 600	1/450	1/300

TABLE ((6)) 7 MINIMUM PLUMBING FIXTURE REQUIREMENTS BASED ON MAXIMUM PEAK PERIOD OCCUPANCY				
Type of Fixture	Occupancy/Sex	Number of Fixtures Required Per Occupancy Load		
		Male	Female	
2. Urinals	First 600	1/200	-	
	Portion exceeding 600	1/450	-	
3. Showers	First 300	1/100	1/100	
	Portion exceeding 300	1/200	1/200	
4. Sinks	First 400	1/200	1/200	
	Next 350	1/350	1/350	
5. Hose bibs	Portion			
	exceeding 750	1/500	1/500	
6. Janitor sink		1 accessible to change rooms		
		1 within the RWCF		

(d) Showers:

(i) Delivering water at a temperature range between ninety and one hundred ten degrees Fahrenheit; and

(ii) Providing liquid or powdered soap in nonglass dispensers.

(e) Flush toilets and toilet tissue in dispensers;

(f) Sinks providing:

- (i) Tempered or hot and cold running water;
- (ii) Liquid or powdered soap in nonglass dispensers, and
- (iii) Disposable towels or electric hand dryers.

(g) Sewage disposed of in a manner approved by the department or local health officer; and

(h) Hose bibs with vacuum breakers provided at convenient locations.

(22) Owners shall design and maintain lighting at RWCF attractions or change rooms to:

(a) Illuminate indoor attractions, outdoor attractions used after dusk, or change rooms with a minimum lighting intensity maintained thirty inches above any walking surface, pool deck, or pool area of:

- (i) Thirty foot-candles at indoor facilities;
- (ii) Fifteen foot-candles at outdoor facilities; or
- (iii) Twenty foot-candles in change rooms.

(b) Allow lifeguards or attendants to clearly see every part of pool waters and walking surfaces; and

(c) Meet any additional lighting requirements deemed necessary by the department or local health officer.

(23) Owners shall provide first-aid facilities in every RWCF including:

(a) A twenty-four package first-aid kit per WAC 296-24-065;

(b) Two or more blankets reserved for emergency use;

(c) A telephone with a prominently displayed list of emergency medical service response numbers;

(d) A backboard meeting the specifications of the ARC; and

(e) Sufficient and suitable area to accommodate persons requiring treatment and necessary first-aid equipment.

(24) Owners shall provide signs at RWCF entrances and change rooms. Any combination of words, pictures, or symbols may be used to convey the following conditions:

(a) Prohibition of use by persons with communicable diseases;

(b) Prohibition of use by persons under the influence of alcohol or drugs;

(c) Requirement for a cleansing shower before entering the attractions;

(d) Warning that persons refusing to obey the attendants are subject to removal from the premises; and

(e) Prohibition of food and drink in pool, change room, or on walking surfaces.

(25) If owners allow or make provision for food service:

(a) Food and beverage sale and consumption areas shall be separate from pool, change room, and walking surfaces;

(b) Trash containers shall be provided; and

(c) No glass containers shall be allowed in the RWCF.

(26) Owners shall prevent users or spectators access to mechanical, electrical, or chemical equipment facilities.

(27) Owners shall provide an operable drinking fountain of the angle jet type design meeting the requirements of the American Standards Association.

AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

WAC 246-262-070 Specific design, construction, and equipment. (1) Owners shall provide specific design, construction, and equipment for the various types of RWCF attractions.

(2) Owners and manufacturers shall ensure adherence to recognized design and construction standards including, but not limited to:

(a) ASTM F-24 Standards on Amusement Rides and Devices;

(b) "Suggested Health and Safety Guidelines for Recreational Water Slide Flumes" U.S. Department of Health and Human Services, Centers for Disease Control, Atlanta, Georgia, 30333;

(c) "World Waterpark Association Considerations for Operating Safety" published by the World Waterpark Association, 7474 Village Drive, Prairie Village, Kansas, 66208; and

(d) Department recognized or approved guidelines, criteria, or standards.

(3) Owners shall ensure design and construction for water slides or tubes, inner-tube rides, kiddie flumes, or ramp slides meet the following minimum standards:

(a) Flume or tube entry access points shall have:

(i) Means to control unauthorized entrance;

(ii) Handrails or slip-resistant surfaces provided to assist users; and

(iii) Attendant stations which provide:

(A) User entry spacing control;

(B) Attendant line of sight to the attraction; and

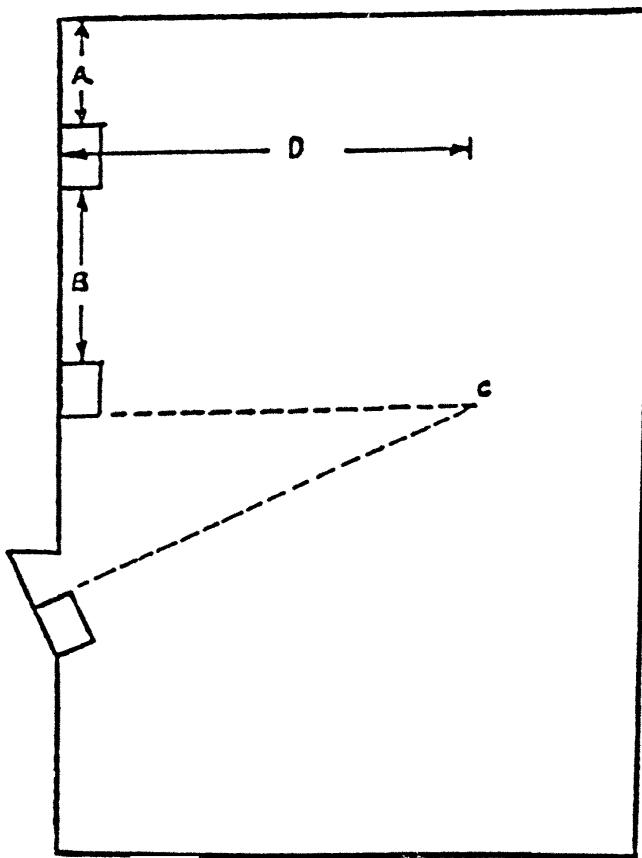
(C) Attendant access to a communication system.

(b) Receiving pools shall have:

(i) Clearances and minimum distances as noted in Figure 3 of this section for tube or flume entrances into pools.

FIGURE ((3)) 4
MINIMUM CLEARANCES FOR FLUME OR TUBE ENTRY TO RECEIVING POOLS

MINIMUM VALUE	DISTANCE	DESCRIPTION
A	5 feet	Minimum distance from edge of flume to side of pool.
B	6 feet	Minimum distance between sides of parallel flumes.
C	20 feet	Minimum distance between two flumes or tubes that are not parallel shall be so constructed so that the intersecting lines of each closest side does not intersect for a distance of at least twenty feet from the end of each flume.
D	20 feet	Minimum distance where flume terminates to opposite side of pool.



- (ii) Flume or tube sliding surface ending below the pool operating water level when users ride unaided or on mats;
- (iii) Flume or tube perpendicular for a minimum of ten feet to the wall of entry;
- (iv) Handrails, when steps are provided for exiting; and
- (v) Attendant and/or lifeguard stations with:
 - (A) Unobstructed access to users; and
 - (B) Ready access to communication system for contacting control station attendant and first-aid personnel.
- (4) Owners shall design and construct barriers to prevent unauthorized entry or exit from any intermediate pool.
- (5) Owners shall ensure design and construction of speed slides meet the following minimum standards:

(a) Entry points conforming with subsection (3)(a) of this section;

(b) Roller- or sled-type slides designed to prevent accidental flipping of the sleds or coasters when entering the water;

(c) Provision of sufficient transition zones for deceleration preventing unsafe user impact; and

(d) Maintenance of critical water operation levels providing proper braking action of the user.

(6) Owners shall ensure design and construction of wave pools meet the following minimum standards:

(a) Walls of wave pools shall be vertical with minimum six inch radius of curvature between wall and pool bottom;

(b) Pool bottom sloped:

(i) Not exceeding one foot of drop in twelve feet of run where pool depths range from zero to three and one-half feet; or

(ii) Not exceeding one foot of drop in nine feet of run where depths range from three and one-half feet to six and one-half feet.

(c) Recessed ladders or step holes with vertical grab bars at depths above three and one-half feet:

(i) For emergency exit only;

(ii) Spaced at intervals of fifty feet or less where pool water depths are greater than three and one-half feet. Pool water depths are measured without wave action.

(d) Deck width of at least ten feet along the shallow end;

(e) A fence or restrictive barrier a minimum of forty-two inches in height and at least two feet out from the pool/deck interface at the side walls of wave pools, with emergency exit openings.

(f) Lifeguard station locations appropriate to prevailing conditions;

(g) A push-button system to shut off the wave-making equipment with:

(i) Shut offs installed on sidewall decks and spaced at intervals no greater than one hundred feet, readily accessible to the lifeguards; and

(ii) Shock hazard protection.

(h) A communication system for use by authorized personnel which is clearly audible to all portions of the pool;

(i) A communication system for interaction between authorized personnel; and

(j) Maximum bathing load (users) not to exceed a value equal to $S/12 + D/68$ where:

(i) "S" equals surface area in square feet where depth is less than three and one-half feet;

(ii) "D" equals surface area in square feet where pool depth is three and one-half feet deep or greater; and

(iii) Pool depths are measured without wave action.

(7) If inner tubes, boogie boards, or surf boards are used, the owner shall ensure the design and operation of the wave pool provides for such activity, including:

(a) The establishment of rules for use;

(b) Operating and emergency procedures; and

(c) Crowd control.

(8) Owners shall ensure design and construction of any wading activity pool meets the following minimum standards. Wading activity pool areas are:

(a) Built with maximum water depth of two feet;

(b) Constructed with pool walls so that distance from deck to water level is six inches or less for at least seventy-five percent of the pool perimeter;

(c) Equipped with floors uniformly sloped to drain with a maximum slope of one foot of drop in twelve feet of run;

(d) Separated by at least a four foot high barrier when distance to any water area greater than four feet in depth is less than ten feet; and

(e) Protected from water areas greater than two feet by providing:

(i) A float line separating the two areas;

(ii) A six inch contrasting color line on pool bottom and side walls at float line; and

(iii) A transition zone with a maximum floor slope not exceeding one foot of drop in twelve feet of run.

(9) Owners shall ensure design and construction of drop slides or drop tubes meet the following minimum standards:

(a) Entry in accordance with subsection (3)(a) of this section;

(b) Receiving pool envelope:

(i) Conforming to CNCA standards noted in WAC 246-262-060 (5)(c)(vi)(A) if the point of exit is less than one-half meter (or twenty inches);

(ii) Conforming to FINA standards noted in WAC 246-262-060 (5)(c)(vi)(B) if the point of exit is one-half meter (or twenty inches) or greater.

(iii) Increasing in size to ensure user safety if warranted by angle of entry or speed of the user.

(c) Sufficient distance between slides or tubes to prevent collisions of users. Parallel exits are recommended.

(d) Direct line of sight and direct communication between entry access point and receiving pool.

(10) Owners shall provide signs for specific RWCF attractions. Words, pictures, or symbols may be used to convey the following as appropriate:

(a) Prohibition of running, standing, kneeling, tumbling, horseplay, or stopping in the flumes or tubes;

(b) Failure to follow directions of attendant or failure to obey posted rules may result in removal from the RWCF;

(c) Prohibition of diving from flume;

(d) Prohibition of multiple user chains if applicable to ride;

(e) Requirement to leave the landing area promptly after exiting;

(f) Recommended minimum or maximum age or height for using this attraction; and

(g) Prohibition of head first sliding if applicable to ride.

(h) Additional information on wave pools including:

(i) Warning that wave pools can be very tiring;

(ii) Warning for small children and poor swimmers to use personal flotation devices in designated areas;

(iii) Requirement for adult supervision for children;

(iv) Prohibition of diving, jumping, or entering from sides of pool; and

(v) Prohibition of using surf boards during periods of general public use.

(11) If the proposed attraction design is not addressed by or exceeds limitations of standards and guidelines specified by this section, owners shall submit:

(a) Justification to the department or local health officer prepared by an engineer; and

(b) Information on the construction, maintenance, and operation of the proposed attraction.

WSR 10-12-074
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed June 1, 2010, 8:19 a.m.]

Continuance of WSR 10-07-145.

Preproposal statement of inquiry was filed as WSR 10-02-112.

Title of Rule and Other Identifying Information: Chapter 16-30 WAC, Restricted feedlots and restricted holding facilities.

Subsequent to the public hearings that were held, the department is extending the adoption date.

Date of Intended Adoption: June 23, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard Eldridge, DVM, Olympia, (360) 902-1878.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they are negligible costs on the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 1, 2010
 Leonard E. Eldridge, DVM
 State Veterinarian

WSR 10-12-075
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed June 1, 2010, 8:19 a.m.]

Continuance of WSR 10-07-147.

Preproposal statement of inquiry was filed as WSR 10-01-108.

Title of Rule and Other Identifying Information: Chapter 16-70 WAC, Animal diseases—Reporting.

The department is extending the adoption date.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 1, 2010

Leonard E. Eldridge, DVM
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902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 1, 2010

Leonard E. Eldridge, DVM
State Veterinarian

WSR 10-12-077

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 1, 2010, 8:20 a.m.]

Continuance of WSR 10-07-149.

Preproposal statement of inquiry was filed as WSR 10-01-107.

Title of Rule and Other Identifying Information: Chapter 16-80 WAC, Pseudorabies in swine.

The department is extending the adoption date.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

WSR 10-12-076

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 1, 2010, 8:20 a.m.]

Continuance of WSR 10-07-148.

Preproposal statement of inquiry was filed as WSR 10-01-106.

Title of Rule and Other Identifying Information: Chapter 16-71 WAC, Equine infectious anemia.

The department is extending the adoption date.

Date of Intended Adoption: June 10, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360)

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 1, 2010

Leonard E. Eldridge, DVM
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WSR 10-12-078
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed June 1, 2010, 8:21 a.m.]

Continuance of WSR 10-07-146.

Preproposal statement of inquiry was filed as WSR 10-01-103.

Title of Rule and Other Identifying Information: Chapter 16-54 WAC, Animal importation.

Subsequent to public hearings, the department is extending the adoption date.

Date of Intended Adoption: June 23, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 1, 2010

Leonard E. Eldridge, DVM
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WSR 10-12-079
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed June 1, 2010, 8:21 a.m.]

Continuance of WSR 10-07-150.

Preproposal statement of inquiry was filed as WSR 10-01-105.

Title of Rule and Other Identifying Information: Chapter 16-604 WAC, Public livestock markets—Health, brands and weights and measures.

Subsequent to the public hearings that were held, the department is extending the adoption date.

Date of Intended Adoption: June 23, 2010.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules Comments@agr.wa.gov, fax (360) 902-2092.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul Kohrs, DVM, Olympia, (360) 902-1835; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 1, 2010

Leonard E. Eldridge, DVM
State Veterinarian

WSR 10-12-087
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 1, 2010, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-013.

Title of Rule and Other Identifying Information: Revises WAC 181-78A-255, 181-78A-264, and 181-78A-270. Amends approval standards for preparation programs adding calibrated teacher standards to the skills and knowledge section. Also addresses governance and program design.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, on July 21, 2010, at 8:30 a.m.

Date of Intended Adoption: July 21, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 14, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by July 14, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Standards for college educator preparation programs are amended to reflect calibrated standards for teacher candidates for first residency certificates. Governance and program design standards are also revised to reflect changed [changes] in approval requirements.

Reasons Supporting Proposal: Stakeholder recommendations.

Statutory Authority for Adoption: RCW 28A.410.210.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

June 1, 2010
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-255 Approval standard—Accountability. Building on the mission to prepare educators who demonstrate a positive impact on student learning, the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(2). ((Each college and university shall:))

(1) Submit for approval to the professional educator standards board a performance-based program for the preparation of teachers, administrators, and educational staff associates that identifies:

(a) A comprehensive set of learner expectations for each preparation program;

(b) An assessment system that reflects the conceptual framework(s) and state standards, and collects and analyzes data on applicant qualifications, candidate and graduate performance, unit operations and program quality;

(c) Explicit connections between professional, state, and institutional standards, and candidate assessments;

(2) During the first year following program completion, solicit feedback from program completers employed in edu-

cation, and their supervisors, regarding the program's effectiveness.

(3) Maintain placement records for all program completers during the first year following program completion.

(4) Submit an annual report to the professional educator standards board for each approved program to include:

(a) An executive summary of the activities of each professional education advisory board, including membership, meeting attendance, meeting expenditure information, PEAB recommendations, and program responses to the recommendations.

(b) The number of students completing each approved program during the period from September 1 - August 31 of the previous year.

(e) Other information related to the preparation programs requested by the professional educator standards board.

(5) Collect and maintain exemplar candidate work samples that document a positive impact on student learning.)

(1) Each approved educator preparation program shall maintain an assessment system that:

(a) Assesses outcomes in alignment with the conceptual framework and state standards.

(b) Systematically and comprehensively gathers evidence on:

(i) Candidate learning;

(ii) Program operations, including placement rates, clinical experiences, and candidate characteristics.

(c) Collects candidate work samples that document positive impact on student learning.

(d) Aggregates key data over time.

(e) Incorporates perspectives of faculty, candidates, and P-12 partners.

(f) Includes processes and safeguards that ensure fair and unbiased assessment of candidates.

(g) Provides for regular analysis of assessment results.

(h) Is systematically linked to program decision-making processes.

(2) Each approved program shall reach agreement with the professional educator standards board on the delivery of data as described in a memorandum of understanding. The memorandum will detail the minimum data requirements for approved programs.

AMENDATORY SECTION (Amending WSR 10-07-077, filed 3/17/10, effective 4/17/10)

WAC 181-78A-264 Approval standard—Program design. Building on the mission to prepare educators who demonstrate a positive impact on student learning, ((the following)) evidence shall be evaluated to determine whether each preparation program is in compliance with the program design standard of WAC 181-78A-220(4):

(1) The conceptual framework establishes the shared vision for the unit's efforts in preparing educators to work effectively in P-12 schools. ((It provides the basis for coherence among curriculum, instruction, field experiences, clinical practice, assessment, and evaluation. The conceptual framework is based on current research and best practice, is cohesive and integrated, supports the state's student learning

goals and for teacher preparation programs, and reflects the essential academic learning requirements. The conceptual framework reflects the unit's commitment to preparing candidates to support learning for all students and the unit's commitment to preparing candidates who are able to use educational technology to help all students learn.

(2) Candidates who demonstrate potential for acquiring the content and pedagogical knowledge and skills for success as educators in schools are recruited, admitted, and retained (see WAC 181-78A-200 Candidate admission policies). These candidates include members from under represented groups.

(3) Programs shall assure that candidates are provided with opportunities to learn the pedagogical and professional knowledge and skills required for the particular certificate, and for teacher preparation programs, the competencies for endorsement areas.

(4) A set of learner expectations for program completion are identified and published.

(5)(a) The unit and its school partners design, implement, and evaluate field experiences and clinical practices so that candidates develop and demonstrate the knowledge and skills necessary to help all students learn. Provided, That candidates for an administrator certificate shall complete an internship pursuant to WAC 181-78A-325, candidates for a school psychologist certificate shall complete an internship pursuant to WAC 181-78A-317, and candidates for a school counselor certificate shall complete an internship pursuant to WAC 181-78A-315, and candidates for a school social worker certificate shall complete an internship pursuant to WAC 181-78A-319.

(b) Field experiences are integrated throughout the preparation program and occur in settings with students representing diverse populations.

(c) Clinical practice is sufficiently extensive and intensive for candidates to demonstrate competence in the professional roles for which they are preparing.

(6) The preparing institution shall assure that candidates are provided with appropriate course work and experiences in teaching methods for each endorsement area. The methods should include:

(a) Instructional strategies.

(b) Curriculum frameworks (essential academic learning requirements).

(c) Assessment strategies, including performance-based measurements of student work.

(d) Unit/lesson planning.

(7) Entry and exit criteria exist for candidates in clinical practice.

(8) Programs reflect ongoing collaboration with P-12 schools.

(9) Candidates for a teacher certificate shall hold/obtain a baccalaureate degree from a regionally accredited college or university pursuant to WAC 181-79A-030(5).

(10) Beginning fall 2003, approved programs shall administer the pedagogy assessment adopted by the professional educator standards board and published by the superintendent of public instruction to all candidates in a residency certificate program.

Candidates must take the pedagogy assessment as a condition of residency program completion. However, passage is not required for program completion as long as the program can provide other evidence, separately or in combination with the results of the pedagogy assessment, that the candidate has satisfied all program completion requirements.

(11) Collaboration. The unit ensures faculty collaborate with others to improve the program.

(a) Faculty within the unit;

(b) Faculty from other units;

(c) P-12 school personnel;

(d) Members of the broader professional community.

(12) Interactions with diverse populations. The unit ensures candidates interact with diverse populations.

(a) Diverse higher education faculty;

(b) Diverse candidates;

(c) Diverse P-12 students;

(d) Diverse individuals who work with students in P-12 classrooms.) The conceptual framework:

(a) Provides coherence among curriculum, instruction, field experiences, clinical practice, candidate assessment, and program evaluation;

(b) Establishes the philosophy, purpose, goals, and standards of the program or unit;

(c) Reflects renewing commitment to current research and best practices; and

(d) Supports the state's goals for P-12 student learning and program approval Standard V.

(2) Recruitment, admission, retention, and transition to the field.

(a) Programs recruit, admit, retain, and transition candidates to the field who:

(i) Demonstrate the content and pedagogical knowledge and skills for success as educators in schools;

(ii) Demonstrate the dispositions of a professional educator;

(iii) Address the state and partner districts' goals for diversifying the workplace;

(iv) Meet the content areas identified by work force data of the state and region.

(b) Learner expectations for program requirements, progression, and completion are identified, published, and accessible.

(3) Field experiences and clinical practice.

(a) The program(s) and its school partners design, implement, and evaluate field experiences and clinical practices.

(b) Field experiences are integrated throughout the preparation program.

(i) Field experiences provide opportunity to plan, practice and reflect on methods of instruction and differentiation;

(ii) Field experiences provide opportunity to work in communities with populations dissimilar to the background of the candidate;

(iii) Faculty supervision, including on-site visits, will be provided on an on-going basis.

(c) Mentors are instructional leaders identified collaboratively with the partner school or district.

(i) Mentors and principals are provided with a set of internship expectations;

(ii) Mentors receive or provide evidence of training on mentoring of adult learners;

(iii) Mentors must be fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising;

(iv) Effectiveness of mentor preparation and communication are reviewed annually by faculty.

(d) All Washington educator preparation programs operating field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(e) Entry and exit criteria and a process for mitigating concerns during clinical practice are provided for candidates and the mentor teacher.

(f) Requirements for specific educator preparation programs.

(i) Teacher programs.

(A) Programs shall administer the pedagogy assessment adopted by the professional educator standards board to all candidates in a residency certificate program.

(B) Clinical practice (defined as supervised planning, instruction, and reflection) for teacher candidates should consist of no less than four hundred fifty hours in classroom settings.

(ii) School counselor programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of four hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic counseling skills and integrate professional knowledge).

(iii) School psychology programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of one thousand two hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic school psychology skills and integrate professional knowledge).

(iv) School social worker programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of three hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic school social work skills and integrate professional knowledge).

(v) Administrator programs.

(A) The internship for administrators shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought.

(B) Components of the required internship shall include demonstration by the candidate that he or she has the appropriate, specific relevant skills pursuant to WAC 181-78A-270.

(C) An approved preparation program for superintendents shall require an internship of at least three hundred sixty hours.

(D) An approved preparation program for principals shall require for those persons beginning their internship August 1, 2009, and after, an internship which requires practice as an intern during the full school year. A "full school year" shall mean five hundred forty hours of which at least one-half shall be during school hours, when students and/or staff are present. Provided further, That an approved preparation program for principals shall require an internship that shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-270(2) and meets, at minimum, the standards-based benchmarks approved and published by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval.

(4) Program and faculty collaboration.

(a) Faculty within the program and unit collaborate for continuous program improvement.

(b) Faculty collaborate with content area specialists.

(c) Programs collaborate with P-12 schools to assess and respond to work force, student learning, and professional development needs.

(d) Faculty collaborate with members of the broader professional community.

(e) Faculty collaborate with members of under-represented populations for program improvement.

(5) Diversity in learning experiences.

(a) Candidates have significant interaction with diverse populations including colleagues, faculty, P-12 practitioners, and P-12 students and families.

(i) Candidates reflect on interactions with diverse populations in order to integrate professional growth in cultural competency as a habit of practice.

(ii) Candidates integrate their cultural and linguistic backgrounds into classroom activities in order to build the multicultural capacity of the preparation program cohort.

(b) Faculty model equity pedagogy through:

(i) Interaction with diverse populations;

(ii) Reflective practice on their own professional growth in cultural competency;

(iii) Culturally relevant communication and problem solving; and

(iv) Personalized instruction that addresses cultural and linguistic backgrounds.

AMENDATORY SECTION (Amending WSR 07-23-046, filed 11/14/07, effective 12/15/07)

WAC 181-78A-270 Approval standard—Knowledge and skills. Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to deter-

mine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER RESIDENCY CERTIFICATION.**

(2) **Knowledge of subject matter and curriculum goals**

(a) Teacher candidates positively impact student learning that is:

(i) **Content driven.** All students develop understanding and problem solving expertise in the content area(s) using reading, written and oral communication, and technology.

(ii) **Aligned with curriculum standards and outcomes.** All students know the learning targets and their progress toward meeting them.

(iii) **Integrated across content areas.** All students learn subject matter content that integrates mathematical, scientific, and aesthetic reasoning.

Knowledge of teaching

(b) Teacher candidates positively impact student learning that is:

(i) **Informed by standards-based assessment.** All students benefit from learning that is systematically analyzed using multiple formative, summative, and self-assessment strategies.

(ii) **Intentionally planned.** All students benefit from standards-based planning that is personalized.

(iii) **Influenced by multiple instructional strategies.**

All students benefit from personalized instruction that addresses their ability levels and cultural and linguistic backgrounds.

(iv) **Informed by technology.** All students benefit from instruction that utilizes effective technologies and is designed to create technologically proficient learners.

Knowledge of learners and their development in social contexts

(e) Evidence of teacher candidate practice reflects planning, instruction and communication that is:

(i) **Learner centered.** All students engage in a variety of culturally responsive, developmentally, and age appropriate strategies.

(ii) **Classroom/school centered.** Student learning is connected to communities within the classroom and the school, including knowledge and skills for working with others.

(iii) **Family/neighborhood centered.** Student learning is informed by collaboration with families and neighborhoods.

(iv) **Contextual community centered.** All students are prepared to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society.

Understanding teaching as a profession

(d) Teacher candidates positively impact student learning that is:

(i) **Informed by professional responsibilities and policies.** All students benefit from a collegial and professional school setting.

(ii) **Enhanced by a reflective, collaborative, professional growth-centered practice.** All students benefit from the professional growth of their teachers.

(iii) **Informed by legal and ethical responsibilities.** All students benefit from a safe and respectful learning environment.) (a) **EFFECTIVE TEACHING.**

(i) Using multiple instructional strategies, including the principles of second language acquisition, to address student academic language ability levels and cultural and linguistic backgrounds;

(ii) Applying the theories of language acquisition and stages of language development in the integration of subject matter across the content areas of mathematical, scientific, and aesthetic reasoning;

(iii) Using standards-based assessment that is systematically analyzed using multiple formative, summative, and self-assessment strategies to monitor and improve instruction;

(iv) Implementing classroom/school centered instruction, including sheltered instruction that is connected to communities within the classroom and the school, and includes knowledge and skills for working with others;

(v) Planning and/or adapting standards-based curricula that are personalized to the diverse needs of each student;

(vi) Aligning instruction to the learning standards and outcomes so all students know the learning targets and their progress toward meeting them;

(vii) Planning and/or adapting curricula that are standards driven so students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology;

(viii) Preparing students to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society;

(ix) Planning and/or adapting learner centered curricula that engage students in a variety of culturally responsive, developmentally, and age appropriate strategies;

(x) Using technology that is effectively integrated to create technologically proficient learners; and

(xi) Informing, involving, and collaborating with families/neighborhoods, and communities in each student's educational process, including using information about student cultural identity, achievement and performance.

(b) **PROFESSIONAL DEVELOPMENT.** Developing reflective, collaborative, professional growth-centered practices through regularly evaluating the effects of his/her teaching through feedback and reflection.

(c) TEACHING AS A PROFESSION.

(i) Participating collaboratively and professionally in school activities and using appropriate and respectful verbal and written communication.

(ii) Demonstrating knowledge of professional, legal, and ethical responsibilities and policies.

(d) **PERFORMANCE ASSESSMENT.** An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning.

(2) PRINCIPAL AND PROGRAM ADMINISTRATOR.

(a) Effective August 31, 1997, through August 31, 2004, principal and program administrator candidates, in order to

support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program which shall include:

(i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short-term and long-term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in cognition and achievement; mobilizing the participation of appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding

to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjusting fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensibilities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups; utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, including current social and economic issues related to education; recognizing global influences on students and society.

(S) **Legal and regulatory applications:** Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on education; working within local rules, procedures, and directives; administering contracts.

(T) **Policy and political influences:** Identifying relationships between public policy and education; recognizing

policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

(U) **Public and media relationships:** Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

(ii) Performance assessment. An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(i) Successful demonstration of standards. A school administrator is an educational leader who promotes the success of all students by:

(A) Facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(B) Advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(C) Ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(D) Collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(E) Acting with integrity, fairness, and in an ethical manner; and

(F) Understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(ii) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(3) **SUPERINTENDENT.** Superintendent candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program for superintendents which shall include specific performance domains for superintendents. An approved preparation program for super-

intendents shall require the candidate to demonstrate in course work and the internship the following:

(a) **Strategic leadership:** The knowledge, skills and attributes to identify contexts, develop with others vision and purpose, utilize information, frame problems, exercise leadership processes to achieve common goals, and act ethically for educational communities. This includes:

- (i) Professional and ethical leadership.
- (ii) Information management and evaluation.

(b) **Instructional leadership:** The knowledge, skills and attributes to design with others appropriate curricula and instructional programs which implement the state learning goals and essential academic learning requirements, to develop learner centered school cultures, to assess outcomes, to provide student personnel services, and to plan with faculty professional development activities aimed at improving instruction. This includes:

- (i) Curriculum, instruction, supervision, and learning environment.

- (ii) Professional development and human resources.
- (iii) Student personnel services.

(c) **Organizational leadership:** The knowledge, skills and attributes to understand and improve the organization, implement operational plans, manage financial resources, and apply decentralized management processes and procedures. This includes:

- (i) Organizational management.
- (ii) Interpersonal relationships.
- (iii) Financial management and resource allocation.
- (iv) Technology and information system.

(d) **Political and community leadership:** The knowledge, skills and attributes to act in accordance with legal provisions and statutory requirements, to apply regulatory standards, to develop and apply appropriate policies, to be conscious of ethical implications of policy initiatives and political actions, to relate public policy initiatives to student welfare, to understand schools as political systems, to involve citizens and service agencies, and to develop effective staff communications and public relations programs. This includes:

- (i) Community and media relations.
- (ii) Federal and Washington state educational law, public policy and political systems.

(4) **SCHOOL COUNSELOR.** Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels).

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society).

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes).

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group

counseling methods and skills, and other group work approaches).

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors).

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements.

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research).

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing).

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;

(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionality, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

(5) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:**

Certified school counselors design, deliver, and evaluate student-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and fed-

eral policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(6) **SCHOOL PSYCHOLOGIST.** Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:

- (i) Learning theory.
- (ii) Personality theory and development.
- (iii) Individual and group testing and assessment.
- (iv) Individual and group counseling and interviewing theory and techniques.
- (v) Basic statistics.
- (vi) Child development.
- (vii) Exceptional children.
- (viii) Social and cultural factors.
- (ix) Deviant personality.

(x) Curriculum, including the state learning goals and essential academic learning requirements.

- (xi) Research design.

(xii) Physiological and biological factors.

(b) Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:

- (i) Intellectual and cognitive assessment.
- (ii) Individual and group academic skills: Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.
- (iii) Personality assessment.
- (iv) Assessment of perceptual skills.
- (v) Assessment of adaptive behavior; assessment of language skills.

(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:

- (i) Data taking.
- (ii) Frequency measures.
- (iii) Qualitative and quantitative analysis of classroom behavior.

(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.

(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:

(i) Provide individual and group counseling to students and parents.

(ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.

(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.

(f) Consultation. The candidate has the knowledge and skill to:

(i) Function on multidisciplinary teams in evaluating and placing students.

(ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.

(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.

(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.

(i) Research. The candidate has knowledge and skill to:

(i) Evaluate and perform research.

(ii) Apply school-oriented research.

(iii) Construct criterion-referenced instruments with reference to such educational decisions as:

(A) Retention in grade.

(B) Acceleration and early entrance.

(C) Early entrance.

(7) **School psychologist.** Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:**

Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate

effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:** Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in

sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) School psychology practice and development:

Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) Information technology: Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

(b) Performance assessment. An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(8) SCHOOL SOCIAL WORKER. Effective August 31, 1997, through August 31, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:

(i) Values.

(A) Knowledge of profession including values, skills, and ethics; and

(B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.

(ii) Human behavior and the social environment.

(A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);

(B) Systems and organizational theory (e.g., school as a bureaucracy);

(C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;

(D) Family dynamics and theories of family therapy;

(E) Human/child growth and development;

(F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;

(G) Theories of personality; and

(H) Use of computer technology for social work practice.

(b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:

(i) Direct practice.

(A) Referring, developing, and coordinating resources and services in the local education agency and community;

(B) Knowledge and skills related to families;

(C) Case management;

(D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;

(E) Crisis intervention, conflict resolution, stress management and decision-making skills;

(F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;

(G) Interviewing and counseling students in relation to social-personal problems adjudged to be impairing student's ability to learn;

(H) Family interventions including parent education; referral to resources; family counseling;

(I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;

(J) Collaborating and consulting with parents and community to assure readiness to learn for all students;

(K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;

(L) Intervention case planning processes; and

(M) Career and academic guidance to students in their school to work transitions.

(ii) Indirect practice.

(A) Liaison and facilitator between and among home, school and community;

(B) Collaborate and consult with other educational staff to assure student progress;

(C) Use computer technology for practice and efficiency;

(D) Develop strategies for increased parental and community involvement with the school;

(E) Develop programs of remediation for students and their families;

(F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;

(G) Provide staff development programs;

(H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and

(I) Function as change agents.

(c) Research and evaluation. The candidate will have necessary skills and knowledge to:

(i) Collect and interpret data in order to evaluate student, school, and community needs;

(ii) Evaluate own practice;

(iii) Become consumer of research findings;

(iv) Understand use of program evaluation methods; and

(v) Utilize computer technology for research and evaluation.

(d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:

(i) State learning goals and essential academic learning requirements;

(ii) Theories of learning;

(iii) School law and professional ethics;

(iv) Computer technology in the workplace; and

(v) Understanding of policies, laws, and procedures.

(9) **School social workers.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.

(ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs identified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as violence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collaborative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional development; assist students and their families in networking with various social support systems in order to benefit student

learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize information sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-78A-315

Program approval requirement—Field experience for school counselors.

WAC 181-78A-317

Program approval requirement—Field experience for school psychologists.

WAC 181-78A-319	Program approval requirement—Field experience for school social workers.
WAC 181-78A-325	Program approval requirement—Field experience for all administrators.

WSR 10-12-090
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 1, 2010, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-018.

Title of Rule and Other Identifying Information: Revises WAC 181-78A-110, clarifies length of approval for educator preparation programs and makes technical amendments.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, on July 21, 2010, at 8:30 a.m.

Date of Intended Adoption: July 21, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 14, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by July 14, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Approval status remains in effect for period of time approve[d] in review. Clarifies language.

Reasons Supporting Proposal: Technical clarity.

Statutory Authority for Adoption: RCW 28A.410.210.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

June 1, 2010
 David Brenna
 Legislative and
 Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-24-082, filed 12/5/06, effective 1/5/07)

WAC 181-78A-110 Length of time for which program approval status shall be granted. (1) Existing programs. Based upon review of the program site visit report and other documentation requested, the professional educator standards board shall take one of the following actions:

- (a) One-year approval;
- (b) Five-year approval;
- (c) Seven-year approval (WAC 181-78A-100(6)); or
- (d) Disapproval (WAC 181-78A-115).

A program with full five- or seven-year approval shall not receive a disapproval rating.

(2) New programs. All new programs shall be conditionally approved for up to two years under WAC 181-78A-105.

(3) The ((superintendent of public instruction)) professional educator standards board, upon receipt of a complaint from any source or upon her or his initiative, or initiative of the professional educator standards board may review all or any part of a preparation program for compliance with the provisions of this chapter. If deviations are found, the professional educator standards board is authorized to rescind program approval until the college or university submits an acceptable compliance agreement which will bring the preparation program into compliance as soon as reasonably practicable, but no later than the commencement of the succeeding academic year or six calendar months, whichever is later.

(4) If an acceptable compliance agreement is not developed and approved by the professional educator standards board, the preparation program shall be placed on probationary status and the probationary status provision of WAC 181-78A-115 shall apply.

WSR 10-12-092
PROPOSED RULES
GAMBLING COMMISSION

[Filed June 1, 2010, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-08-033.

Title of Rule and Other Identifying Information: WAC 230-15-695 Adjusting progressive jackpot amounts.

Hearing Location(s): Vancouver Heathman Lodge, 7801 Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on August 12, 2010, at 1:30 p.m.; or on August 13, 2010, at 9:00 a.m.

Date of Intended Adoption: August 12 or 13, 2010.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by August 1, 2010.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by August 1, 2010, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Progressive jackpots are funded from a percentage of each progressive jackpot wager. Currently, WAC 230-15-695 allows house-

banked card game licensees to reduce the amount of a progressive jackpot prize accrued or displayed for specific reasons. The rule does not allow for house-banked card game licensees to reduce the amount of a progressive jackpot prize accrued or displayed in order to seed a different progressive card game without recognizing that amount as gross receipts. If a house-banked card game licensee wants to use money from a progressive reserve account to seed a different progressive card game, they must recognize this amount as gross receipts under WAC 230-15-695(4) and pay the appropriate taxes on said gross receipts. The proposed change would allow house-banked card rooms offering progressive jackpot card games to reduce a reserve or secondary jackpot to seed a different progressive jackpot game without recognizing this amount as gross receipts.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Great American Gaming, Corp., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the proposed rule change does not impose more than minor costs, as defined in chapter 19.85 RCW, to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

June 1, 2010
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-695 Adjusting progressive jackpot amounts. House-banked card game licensees must not reduce the amount of a progressive jackpot prize accrued or displayed except for the following reasons:

(1) To reduce the jackpot and the advertised amount by the amount won; or

(2) To correct an amount displayed incorrectly because of malfunctioning equipment; or

(3) To correct the display when the amount displayed is greater than the predetermined maximum prize limit; or

(4) To reduce a reserve or secondary jackpot as long as they record the funds removed as gross receipts and properly documented that in their records; or

(5) To reduce a reserve or secondary jackpot to recover seed money that was not taken from gross receipts, if they properly document those funds in their records; or

(6) To reduce the jackpot by the dollar amount they paid for merchandise they award as prizes.

(7) To reduce a reserve or secondary jackpot to immediately seed a different progressive jackpot if the licensee properly documents this transfer in their records.

WSR 10-12-094

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 1, 2010, 2:10 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 308-124A-775.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on July 7, 2010, at 3:00 p.m.

Date of Intended Adoption: July 7, 2010, or after.

Submit Written Comments to: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by June 18, 2010.

Assistance for Persons with Disabilities: Contact Sally Adams by June 18, 2010, TTY (360) 664-8885 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct error in the firm/assumed name fee from \$210.00 to \$200.00 and correct the subsequent fingerprint processing fee.

Reasons Supporting Proposal: The current fee for the real estate research center is based upon individual licenses, not on firm licenses. To correct this, the fee for a firm licensee needs to be reduced by \$10.00 to \$200.00.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: RCW 18.85.451.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Real estate program, business and professions division, department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Fee is set in statute for individual licensees for the real estate research account. This is to correct error and not charge business firms this fee.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this statute.

June 1, 2010
Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed after July 1,

2010, and all renewals for existing licenses with expiration date after July 1, 2010. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center for the real estate broker and the real estate managing broker licenses. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	146.25
License renewal	146.25
Late renewal with penalty	172.75
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	210.00
License renewal	210.00
Late renewal with penalty	236.50
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate firm <u>and assumed name</u> license:	
Original license	\$((210.00)) <u>200.00</u>
License renewal	((210.00)) <u>200.00</u>
Late renewal with penalty	((236.50)) <u>226.50</u>
Name or address change	0.00
Duplicate license	26.50
Certification	26.50
Real estate branch:	
Original license	\$189.50
License renewal	189.50
Late renewal with penalty	216.50
Certification	26.50
Duplicate license	26.50
Name or address change, transfer or license activation	0.00
Fingerprint processing	\$35.25
<u>Subsequent fingerprint processing</u>	<u>\$30.00</u>

Fingerprints rejected by the department, Washington state patrol or FBI will necessitate subsequent fingerprint processing fees.

Fingerprinting fee does not include the cost of obtaining prints. Applicants will be responsible for obtaining their fingerprints for their cards.

WSR 10-12-097

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed June 1, 2010, 5:09 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Adopt Regulation I, Article 14 (Public Records), Sections 14.01, 14.02, 14.03, 14.04, 14.05, 14.06, 14.07, and 14.08.

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on July 22, 2010, at 8:45 a.m.

Date of Intended Adoption: July 22, 2010.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by July 21, 2010.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by July 15, 2010, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt regulations to implement the requirements of the Public Records Act by adding a new Article 14 to the agency's Regulation I. The proposed rules are based on model rules prepared by the attorney general's office with some customization for the agency. The agency has consistently followed the act's requirements and the proposed rules do not significantly change the agency's current practices.

Reasons Supporting Proposal: The state Public Records Act (RCW 42.56.070) requires all agencies to adopt regulations to implement the act's requirements.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4015; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

June 1, 2010
James L. Nolan
Interim Executive Director

NEW SECTION

REGULATION I ARTICLE 14: PUBLIC RECORDS **REGULATION I SECTION 14.01 AUTHORITY AND PURPOSE**

(a) The Public Records Act ("Act") chapter 42.56 RCW, requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The Act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by an agency.

(b) The purpose of these rules is to establish the procedures the Agency will follow in order to provide full access to public records, to provide fullest assistance to requesters, to provide the most timely possible action on public records requests, to protect records from damage or disorganization, and to prevent excessive interference with other essential functions of the Agency. These rules provide information to persons wishing to request access to public records of the Agency and establish processes for both requesters and Agency staff that are designed to best assist members of the public in obtaining such access.

(c) The purpose of the Act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The Act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the Act, the Agency will be guided by the provisions of the Act describing its purposes and interpretation.

(206) 343-7522 (facsimile)
recordsrequest@pscleanair.org

Information is also available on the Agency's website at: <http://www.pscleanair.org>.

(c) **Duties of public records officer.** The public records officer oversees compliance with the Act but another Agency staff member may process the request. Therefore, any reference to the public records officer in these rules may refer to the officer or a designee. The public records officer and the Agency will provide the "fullest assistance" to requesters as required by the Act; will ensure that public records are protected from damage or disorganization; and will prevent fulfilling public records requests from causing excessive interference with essential functions of the Agency.

NEW SECTION

REGULATION I SECTION 14.03 AVAILABILITY OF PUBLIC RECORDS

(a) **Hours for inspection of records.** Public records are available for inspection and copying during the normal business hours of the Agency: Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding legal holidays. Records must be inspected at the office of the Agency.

(b) **The Agency does not have a records index.** Given the small size of the Agency and the high volume and types of public records generated and received by the Agency, the Agency finds that maintaining an index is unduly burdensome and would interfere with Agency operations.

(c) **Organization of records.** The Agency will maintain its records in a reasonably organized manner. The Agency will take reasonable actions to protect records from damage and disorganization. A requester shall not take Agency records from Agency offices without the permission of the public records officer.

(d) **Records are available on the Agency's website.** A variety of records are available on the Agency's website at <http://www.pscleanair.org>. Requesters are encouraged to view the documents available on the website prior to submitting a records request.

(e) **Making a request for public records.**

(1) Any person wishing to inspect or copy public records of the Agency should make the request in writing on the Agency's request form, or by letter, fax, or e-mail addressed to the public records officer, and including the following information:

(A) Name of requester;
(B) Address of requester;

(C) Other contact information, including telephone number and any e-mail address;

(D) Identification of the public records adequate for the public records officer to locate the records; and

(E) The date and time of day of the request.

(2) If the requester wishes to have copies of records made instead of simply inspecting them, they should so indicate and make arrangements to pay for copies of the records or pay a deposit consistent with Section 14.07 of this regulation.

NEW SECTION

REGULATION I SECTION 14.02 AGENCY DESCRIPTION, CONTACT INFORMATION, PUBLIC RECORDS OFFICER

(a) **Location of Agency's offices.** The Agency's offices are located at 1904 3rd Avenue, Suite 105, Seattle, WA 98101-3317.

(b) **Identification of and contact information for Agency's public records officer.** Any person wishing to request access to public records of the Agency, or seeking assistance in making such a request should contact the Agency's public records officer:

Stella Nehen, Public Records Officer
1904 3rd Avenue, Suite 105
Seattle, WA 98101-3317
(206) 689-4011 (phone) or (800) 552-3565, Ext. 4011
(toll free phone)

(3) A form is available for use by requesters at the Agency's offices and on-line at: <http://www.pscleanair.org/contact/reqform.aspx>.

(4) The public records officer may accept requests for public records that contain the above information by telephone or in person. If the public records officer accepts a verbal request, they will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

REGULATION I SECTION 14.04 PROCESSING OF PUBLIC RECORDS REQUESTS—GENERAL

(a) **Agency processes requests efficiently.** The public records officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

(b) **Acknowledging receipt of request.** Within 5 business days of receipt of a request, the public records officer will do one or more of the following:

(1) Make the records available for inspection or copying;

(2) Provide an internet address and link on the Agency's website to the specific records requested;

(3) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requester;

(4) Provide a reasonable estimate of when records will be available;

(5) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requester. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available based upon a clarification; or

(6) Deny the request.

(c) **Consequences of failure to respond.** If the Agency does not respond in writing within 5 business days of receipt of the request for disclosure, the requester should consider contacting the public records officer to determine the reason for the failure to respond.

(d) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requester and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to an affected person will include a copy of the request. The requester will be notified of the time provided to an affected person to respond to a notice under this section.

(e) **Inspection of records.**

(1) Consistent with other demands, the Agency shall promptly provide space to a requester to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requester shall indicate which documents they wish the Agency to copy.

(2) The requester must claim or review the assembled records within 30 days of the Agency's notification that the records are available for inspection or copying. The Agency will notify the requester in writing of this requirement and inform the requester that they should contact the Agency to make arrangements to claim or review the records. If the requester or a representative of the requester fails to claim or review the records within the 30-day period or make other arrangements, the Agency may close the request and re-file the assembled records. Other public records requests may be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(f) **Providing copies of records.** After inspection is complete, the public records officer shall make the requested copies or arrange for copying.

(g) **Providing records in installments.** When the request is for a large number of records, the public records officer will provide access for inspection and copying in installments, if they reasonably determine that it would be practical to provide the records in that way. If, within 30 days, the requester fails to inspect the entire set of records or one or more of the installments, the public records officer may stop searching for the remaining records and close the request.

(h) **When access to Agency website is unavailable to requester.** If a requester notifies the Agency that they cannot access an Agency record through the Agency's website, the Agency will make a paper copy of the requested record available to the requester.

(i) **Completion of inspection.** When an inspection of requested records is complete and all requested copies are provided, the public records officer will indicate to the requester that the Agency has made all located, nonexempt records available for inspection.

(j) **Closing withdrawn or abandoned request.** When a requester withdraws a request, fails to fulfill his or her obligations to inspect the records, or fails to pay a deposit or final payment for requested copies, the public records officer will close the request and indicate to the requester that the Agency has closed the request.

(k) **Later discovered documents.** If, after the Agency has informed a requester that it has provided all available records, the Agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requester of the additional documents and provide them on an expedited basis.

NEW SECTION

REGULATION I SECTION 14.05 PROCESSING OF PUBLIC RECORDS REQUESTS—ELECTRONIC RECORDS

(a) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(b) **Providing electronic records.** When a requester requests records in an electronic format, the public records officer will provide the nonexempt records or portions of

such records that are reasonably locatable in an electronic format that is used by the Agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the Agency keeps the records.

(c) **Customized access to data bases.** With the consent of the requester, the Agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The Agency may charge a fee consistent with RCW 43.105.280 for such customized access.

NEW SECTION

REGULATION I SECTION 14.06 EXEMPTIONS

(a) **Some Agency records are exempt from inspection and copying.** The Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any other statute exempts or prohibits disclosure. Requesters should be aware of exemptions, outside the Act, that restrict the availability of some documents held by the Agency for inspection and copying. The Agency incorporates by reference a list of laws containing exemptions located and maintained by the Municipal Research Service Center, which is located at: <http://www.mrsc.org/Publications> (Appendix C to Public Records Act for Washington Cities and Counties, MRSC, Report No. 61 Revised, November 2009). A copy of this list may be obtained from the public records officer.

(b) **Exemptions shall be stated and briefly explained by the Agency.** If the Agency believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requester why portions of the record are being redacted.

(c) **Lists of individuals may not be disclosed for commercial purposes.** The Agency is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

REGULATION I SECTION 14.07 COSTS OF PROVIDING COPIES OF PUBLIC RECORDS

(a) **No fee for inspecting records.** There is no fee for inspecting public records. There is no fee for the Agency's time spent locating records or for preparing records for inspection or copying.

(b) **Costs for paper copies.**

(1) There is no fee for the first 50 paper copies made per request. For requests greater than 50 pages:

(A) If paper copies are made at the Agency, a requester may obtain photocopies for \$.15 per page;

(B) If paper copies are made outside the Agency at a commercial copier, a requester may obtain copies at the actual cost charged by the commercial copier.

(2) Before beginning to make paper copies, the public records officer may require a deposit of up to 10% of the estimated costs of copying all the records selected by the requester. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Agency does not charge sales tax when it makes copies of public records.

(c) **Costs for electronic records.** There is no fee for e-mailing electronic records to a requester. If the Agency uses a commercial copier to scan records to respond to a request electronically, a requester may obtain the scanned records at the actual scanning cost charged by the commercial copier.

(d) **Costs of mailing.** The Agency may also charge actual costs of mailing, including the cost of the shipping container.

(e) **Payment.** Payment may be made by cash, check, money order, or credit card to the Puget Sound Clean Air Agency.

NEW SECTION

REGULATION I SECTION 14.08 REVIEW OF DENIALS OF PUBLIC RECORDS

(a) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including by e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer denying the request.

(b) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the Director of Compliance and Legal. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the Agency's receipt of the petition, or within such other time period to which the Agency and the requester mutually agree.

(c) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

**WSR 10-12-098
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed June 1, 2010, 5:11 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Adopting new Regulation II, Section 2.07 (Gasoline Dispensing Facilities) to be effective September 1, 2011 (while retaining

the existing Section 2.07 effective through August 31, 2011, until repealed).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on July 22, 2010, at 8:45 a.m.

Date of Intended Adoption: July 22, 2010.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by July 21, 2010.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by July 15, 2010, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To improve emission control performance by eliminating daily responsibility for the on-site operator, and increasing the periodic testing program in order to achieve more frequent repairs and reduce the time between tests when system compliance status is not verified.

Reasons Supporting Proposal: The proposed new rule should result in improved emission control performance of vapor recovery systems by facilitating completion of repairs in a timely manner.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Mario Pedroza, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4023; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

June 1, 2010

James L. Nolan

Interim Executive Director

AMENDATORY SECTION

REGULATION II SECTION 2.07 GASOLINE DISPENSING FACILITIES (in effect through August 31, 2011)

(a) Applicability

This section applies to any facility that dispenses gasoline from a stationary storage tank with a rated capacity of more than 1,000 gallons into a motor vehicle fuel tank. The provisions of this rule do not apply to any Stage 1 or Stage 2 vapor recovery system that is not required by this rule. This rule does not require the installation of any In Station Diagnostics (ISD) system.

(b) Definitions

(1) CARB-CERTIFIED means a Stage 1 or Stage 2 vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order (including any subsequent approval letters). However, any ISD system specified in a CARB executive order is not required.

(2) OWNER OR OPERATOR means a person who owns, leases, supervises, or operates a facility subject to this regulation.

(c) Stage 1 Vapor Recovery Requirements

(1) Installation Requirements

(A) Owners or operators must install a CARB-certified Stage 1 vapor recovery system on any gasoline storage tank with a rated capacity of more than 1,000 gallons that is either located at a facility where the current annual gasoline throughput is greater than 200,000 gallons or installed after January 1, 1979.

(B) Any person installing a CARB-certified Stage 1 vapor recovery system must install the system in accordance with the CARB executive order in effect on the date of installation.

(2) Maintenance Requirements

(A) All Stage 1 vapor recovery systems shall be installed, operated, and maintained in accordance with the CARB executive order in effect on the date of installation. Defects listed in Table 1(a) or 1(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(B) After June 1, 2005, all dual-point Stage 1 vapor recovery systems located at a facility required to be equipped with Stage 2 vapor recovery systems must be equipped with swivel adapters.

(3) Self-Inspection Requirements

Owners or operators must inspect each Stage 1 vapor recovery system between gasoline deliveries for the defects listed in Table 1(a) or 1(b), depending on the type of system installed, using the inspection procedures listed in the tables. However, if the facility receives more than one delivery to a tank in a day, the inspection is only required once per day.

Table 1(a)
Dual-Point Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> Visually inspect the dust cap on both the fill and vapor risers. Try to turn the dust cap on both the fill and vapor risers by hand. 	<ul style="list-style-type: none"> Cap gasket is missing or damaged. Cap is missing or damaged. Cap turns with hand pressure.
Adapter Vapor Riser (brass fitting on tank riser)	Slowly depress poppet and check gasket and poppet alignment.	Poppet is inoperative, not aligned properly, or the gasket is damaged.

Equipment	Inspection Procedures	Defects
Adapter (brass fitting on tank riser) <i>(Not required for swivel adapters.)</i>	Try to turn the adapters on both the fill and vapor risers by hand.	Adapter turns with hand pressure.
Fill Tube (from adapter to bottom of tank)	Visually inspect the fill tube gasket, if clearly visible after removal of dust cap. <i>(Some fill tube assemblies may not allow observation of the fill tube gasket except by a service technician.)</i>	Fill tube gasket is damaged or missing.
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> • Liquid level is more than 1 inch. • Drain valve is open or leaking vapors.

Table 1(b)
Coaxial Stage 1 Defects

Equipment	Inspection Procedures	Defects
Dust Cap (tank cap on top of adapter)	<ul style="list-style-type: none"> • Visually inspect the dust cap on the fill riser. • Try to turn the dust cap on the fill riser by hand. 	<ul style="list-style-type: none"> • Cap gasket is missing or damaged. • Cap is missing or damaged. • Cap turns with hand pressure.
Adapter (brass fitting on tank riser)	Slowly depress the coaxial drop tube, check poppet gasket and poppet alignment.	Poppet is inoperative or out of alignment, poppet gasket is damaged, or spring is broken.
Adapter (brass fitting on tank riser)	Try to turn the adapter by hand.	Adapter turns with hand pressure.
Spill Bucket	Visually inspect the liquid level in the spill bucket and the condition of the drain valve.	<ul style="list-style-type: none"> • Liquid level is more than 1 inch. • Drain valve is open or leaking vapors.

(4) Corrective Action Requirements for Stage 1 Defects

(A) Whenever a Stage 1 defect as described in Table 1(a) or 1(b) is discovered during a self-inspection, the owner or

operator must repair it as soon as possible after the defect is discovered, but no later than the end of the next business day.

(B) If the defect cannot be repaired by the end of the next business day after discovery, the owner or operator must not receive any gasoline deliveries to the tank where the defect is located until the defect is repaired.

(5) Recordkeeping Requirements

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- date of inspection,
- name of person conducting inspection,
- description of all defects found during the inspection, and
- date and time of repair of the defects.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

(d) Stage 2 Vapor Recovery Requirements

(1) Installation Requirements

(A) Owners or operators must install a CARB-certified Stage 2 vapor recovery system on:

(i) any existing gasoline tank located at a facility where the annual gasoline throughput is greater than 600,000 gallons for facilities located in King, Pierce, or Snohomish counties and greater than 840,000 gallons for facilities located in Kitsap County; or

(ii) on any gasoline tank with a rated capacity of more than 1,000 gallons installed after August 2, 1991 at a facility where the current annual gasoline throughput is greater than 200,000 gallons.

(B) Any person installing a CARB-certified Stage 2 vapor recovery system must install the system in accordance with the CARB executive order in effect on the date of installation.

(2) Maintenance Requirements

(A) All Stage 2 vapor recovery systems installed after April 1, 2003 must be Onboard Refueling Vapor Recovery (ORVR) compatible and must be installed, operated, and maintained in accordance with the CARB executive order in effect on the date of installation. However, ISD system installation is not required. Defects listed in Table 2(a) or 2(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(B) All Stage 2 vapor recovery systems installed prior to April 1, 2003 shall be installed, operated, and maintained in accordance with the CARB executive order in effect as of April 1, 2003, even if CARB later decertifies the system. In such a case, the installation of equipment determined by the manufacturer to be interchangeable with the original approved equipment is permitted. Defects listed in Table 2(a) or 2(b) are evidence that the installed equipment is not operated or maintained in accordance with this requirement.

(3) Self-Inspection Requirements

Owners or operators must inspect Stage 2 vapor recovery systems every day the facility is open for business for the defects listed in either Table 2(a) or 2(b), depending on the type of system installed, using the inspection procedures listed in the tables.

Table 2(a)
Vapor-Balance Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle Spout	Pull back the boot to ensure the latch ring is on the spout.	Latch ring is missing.
Nozzle	Visually inspect the boot (bellows) for holes or slits.	No boot hole shall be more than 1/4 inch diameter. No slit shall exceed 1/2 inch in length.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Nozzle	Visually inspect faceplate for missing or damaged surface area.	1/4 or more of the circumference of the bellows faceplate is damaged or missing.
Nozzle (equipped with insertion interlock mechanism)	Compress the boot and note the tension on the trigger. Release the boot and note the tension on the trigger.	If the trigger is loose when the boot is compressed or the trigger is firm when the boot is released, the insertion interlock is defective.
Hose (from dispenser to nozzle) including Whip Hose	Visually inspect the hose for physical condition.	Hose has cuts, holes, is flattened, or kinked, or the fuel flow direction is incorrect (if marked on the hose).

Table 2(b)
Vacuum-Assist Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle Spout Latch Coil	Visually inspect each nozzle for missing latch coils.	Latch coil is missing.
Nozzle	Visually inspect the mini-boot (bellows) for holes or slits.	More than 1/8 of the outer edge of the mini-boot is missing, or a slit is greater than 1 1/2 inches long.
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.

Equipment	Inspection Procedures	Defects
Hose (from dispenser to nozzle)	Visually inspect the hose.	Hose has cuts, holes, is flattened, or kinked, or the fuel flow direction is incorrect (if marked on the hose).

(4) Corrective Action Requirements for Stage 2 Defects

(A) Whenever a Stage 2 defect as described in Tables 2(a) or 2(b) is discovered during a self-inspection, the owner or operator must repair it as soon as possible.

(B) If the defect cannot be repaired within one hour after discovery, the defective equipment must be removed from service until the defect is repaired.

(5) Recordkeeping Requirements

(A) Owners or operators must keep a log of the results of each self-inspection, which must include the following:

- time and date of the inspection,
- person conducting the inspection,
- a description of all defects found during the inspection, and
- time and date of repair of any defects.

(B) The log must be kept on-site at the facility and available for inspection for at least 2 years after the date the record was made.

(e) Self-Inspection Training Requirements

(1) Owners or operators of facilities with Stage 2 vapor recovery systems must provide training for all employees who are responsible for performing self-inspections of the Stage 1 and Stage 2 vapor recovery equipment within 30 days of hire and provide on-site refresher training for those employees at least once every calendar year.

(2) The self-inspection training must include all of the following:

(A) The location, function, and operation of vapor recovery equipment.

(B) Why vapor recovery equipment must be inspected and maintained.

(C) How to inspect vapor recovery equipment.

(D) How to recognize a defect.

(E) Appropriate corrective actions when defects are discovered.

(F) How to keep the necessary records.

(G) The penalties for noncompliance.

(3) The person providing the training must conduct the training in accordance with this section.

(4) After conducting the training required by this section, the owner or operator must prepare a written training report that includes:

- name and address of person conducting the training,
- date of the training, and
- names of the persons trained.

Owners or operators must keep a copy of the training report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

(f) Stage 2 Testing Requirements

(1) Testing Requirements

(A) Owners or operators must obtain compliance tests of vacuum-assist Stage 2 vapor recovery systems at least once every 12 months, and tests of vapor-balance Stage 2 vapor recovery systems at least once every 24 months.

(B) Each time a test is conducted, the test shall also include a review of the on-site records required by this rule including: training, self-inspections, gasoline throughput, and testing.

(C) The person performing the tests must conduct the following compliance tests for each Stage 2 vapor recovery system:

Table 3
Required Stage 2 Compliance Tests

Stage 2 Vapor Recovery Systems	CARB Tests Required	CARB Test Procedures ¹	Date of Adoption
All Vapor-Balance	Static Pressure Decay	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
All Vacuum-Assist	Static Pressure Decay	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Healy 600 G-70-165	Static Pressure Decay	TP-201.3	March 17, 1999
	Vapor Line Vacuum Integrity Test	G-70-165 Exhibit 4	April 20, 1995
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Healy 400 ORVR G-70-186	Static Pressure Decay	TP-201.3	March 17, 1999
	Fill Neck Pressure Test	G-70-186 Exhibit 5	October 26, 1998
	Vapor Line Vacuum Integrity Test	G-70-186 Exhibit 4	October 26, 1998
	Tank-Tie Test ²	TP-201.3C	March 17, 1999
Hirt System G-70-177-AA	Static Pressure Decay	TP-201.3	March 17, 1999
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test ²	TP-201.3C	March 17, 1999

¹Or test procedures that have been approved, by CARB, as equivalent to CARB procedures.

²Tank-tie test must be conducted at least once, or after any tank configuration changes to show the tanks are manifolded. The tank-tie test records must always be kept on-site to verify compliance.

(2) Testing Procedures

(A) The person performing the tests must conduct the testing in accordance with the CARB test procedures contained in Table 3. Once each calendar year and before conducting any tests under this rule, a person performing CARB compliance tests must submit a written summary of their training and qualifications to perform the test to the Agency.

(B) The tests listed in Table 3 are exempt from the requirements of Section 3.07 of Regulation I, however persons performing such tests must notify the Agency in writing at least 72 hours prior to conducting a test to provide the Agency an opportunity to observe the test.

(3) Failed Compliance Tests

Owners or operators must notify the Agency within 24 hours of any failed compliance tests, if the defective equipment cannot be repaired or replaced by the person conducting the test on the day of the test. If the defective equipment cannot be repaired by the close of the next business day following the failed compliance test, the owner or operator must stop receiving and/or dispensing gasoline from the defective equipment until it is repaired and retested, and passes all required compliance tests. This does not include any operation of the equipment necessary to conduct a retest.

(4) Test Reports

(A) After the testing required by this section has been conducted, the owner or operator must obtain a written test report.

(B) The written report must include:

- name and address of the tester,
- date of the testing,
- equipment tested,
- test procedures used,
- results of the tests,
- any repairs or corrective actions necessary to pass the tests, and
- results of the records review, including whether the on-site records comply with the requirements of this rule.

(5) Recordkeeping Requirements for Owners and Operators

Owners or operators must keep a copy of the test report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

NEW SECTION**REGULATION II SECTION 2.07 GASOLINE DISPENSING FACILITIES
(in effect as of September 1, 2011)**

(a) Applicability

(1) The requirements of Section 2.07 of this regulation apply to any facility that dispenses gasoline into a motor vehicle fuel tank from a stationary storage tank with a rated capacity of more than 1,000 gallons. The provisions of this rule do not apply to any Stage 1 or Stage 2 vapor recovery

system that is not required by this rule. This rule does not require the installation of any In Station Diagnostics (ISD) system.

(2) This rule shall have an effective date of September 1, 2011.

(b) Definitions

(1) **CARB-CERTIFIED** means a Stage 1 or Stage 2 vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order. Each equipment component listed on the applicable certified-CARB Executive Order must be installed. Equipment component(s) not listed in a CARB Executive Order may not be installed as replacement for a certified part.

(2) **INSTALL or INSTALLING** means establishing or placing in service CARB-certified Stage 1 or Stage 2 vapor recovery equipment at a facility within the Agency's jurisdiction, and includes repairs completed as part of compliance testing. Equipment repairs performed by an owner or operator to correct defects discovered through self-inspection are not included in this definition.

(3) **ORVR** means the Onboard Refueling Vapor Recovery system contained within a vehicle that captures the gasoline vapors that are displaced when gasoline is dispensed to the vehicle tank.

(4) **OWNER or OPERATOR** means a person who owns, leases, supervises, or operates a facility subject to this regulation.

(5) **STAGE 1 MODIFICATION** means any of the following equipment changes or projects, including but not limited to:

(A) Installation or replacement of a stationary storage tank rated more than 1,000 gallons that stores gasoline;

(B) Replacement of Stage 1 components that are upgrades, including but not limited to replacement of all spill buckets, all drop tubes, or all adaptors.

(6) **STAGE 2 MODIFICATION** means any of the following equipment changes or projects, including but not limited to:

(A) Addition of new fueling position(s);

(B) Replacement of all existing dispensers;

(C) Converting vapor-balance system to vacuum-assist system or converting vacuum-assist system to vapor-balance system;

(D) Replacement of Stage 2 vapor recovery components that are upgrades, including but not limited to dispensing configuration changes to include six-pack to blending dispenser conversions, and replacement of pre-ORVR dispensers to ORVR-compatible or Enhanced Vapor Recovery (EVR) technology.

(7) **SYSTEM** means the complete and integrated components necessary to provide the vapor recovery emission control service for a gasoline dispensing facility required in Section 2.07 of this regulation. A system may be the Stage 1 vapor recovery equipment, the Stage 2 vapor recovery equipment, and/or the combined integration of appropriate Stage 1 and Stage 2 vapor recovery equipment at a gasoline dispensing facility.

(8) **TEST or TESTING** means the performance of a test or method or series of tests or methods to determine the integrity, functionality or effectiveness of CARB-certified Stage 1

or Stage 2 vapor recovery equipment at a facility within the Agency's jurisdiction.

(c) Installation Requirements

(1) Installation Requirements - Stage 1

(A) All gasoline dispensing facilities with a current annual gasoline throughput greater than 200,000 gallons or with a gasoline storage tank installed after January 1, 1979 shall be equipped with a CARB-certified Stage 1 vapor recovery system.

(B) After April 1, 2001, all gasoline dispensing facilities that install or replace a gasoline tank or a Stage 1 vapor recovery system shall be equipped with a CARB-certified EVR system. This requirement includes installations defined as a Stage 1 modification in Section 2.07 of this regulation.

(C) Any person installing a CARB-certified Stage 1 vapor recovery system must install the system in accordance with the applicable CARB Executive Order in effect on the date of installation.

(D) Any person installing CARB-certified Stage 1 vapor recovery equipment shall be certified as required in Section 2.07(f) of this regulation.

(E) All gasoline dispensing facilities with dual-point Stage 1 vapor recovery systems shall be equipped with Stage 1 swivel adapters if the facility is required to be equipped with a Stage 2 vapor recovery system under Section 2.07 (c)(2) of this regulation.

(2) Installation Requirements - Stage 2

(A) All gasoline dispensing facilities with a current annual gasoline throughput greater than 600,000 gallons (or 840,000 gallons for Kitsap County only) shall be equipped with a CARB-certified Stage 2 vapor recovery system.

(B) All gasoline dispensing facilities with both a current annual gasoline throughput greater than 200,000 gallons and a gasoline storage tank installed after August 2, 1991 shall be equipped with a CARB-certified Stage 2 vapor recovery system.

(C) All gasoline dispensing facilities with Stage 2 vapor recovery systems installed after April 1, 2003 shall employ either CARB-certified ORVR compatible systems or CARB-certified EVR systems. This requirement includes installations defined as a Stage 2 modification.

(D) Any person installing a CARB-certified Stage 2 vapor recovery system must install the system in accordance with the applicable CARB Executive Order in effect on the date of installation.

(E) Any person installing CARB-certified Stage 2 vapor recovery equipment shall be certified as required in Section 2.07(f) of this regulation.

(d) Maintenance Requirements

(1) Maintenance Requirements - All Stage 1 vapor recovery systems shall be operated and maintained in accordance with the applicable CARB Executive Order in effect on the date of installation.

(2) Maintenance Requirements - Stage 2

(A) All Stage 2 vapor recovery systems installed after April 1, 2003 must be ORVR compatible and must be operated and maintained in accordance with the applicable CARB Executive Order in effect on the date of installation. However, ISD system installation is not required.

(B) All Stage 2 vapor recovery systems installed prior to April 1, 2003 shall be operated and maintained in accordance with the applicable CARB Executive Order in effect as of April 1, 2003, even if CARB later decertifies the system. For Stage 2 vapor recovery systems installed prior to April 1, 2003, the installation of equipment determined by the manufacturer to be interchangeable with the original approved equipment is allowed.

(C) Defects listed in Table 1 are evidence that the installed equipment is not operated or maintained in accordance with Section 2.07 of this regulation. The defects listed in Table 1 shall be included in the operation and maintenance plan required for the facility.

Table 1
Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Hose (from dispenser to nozzle) including whip hose	Visually inspect the hose for leaking gasoline.	Visible gasoline leaks.

(e) Testing requirements

(1) Stage 1 Initial Installation Testing Requirements

(A) Owners or operators must obtain the Stage 1 compliance tests identified in Table 2, and each test must be conducted in accordance with the test procedures identified in Table 2. The compliance tests shall be completed after initial installation of any Stage 1 system and prior to dispensing fuel commercially.

(B) Stage 1 compliance tests shall be performed by person(s) who are certified as required in Section 2.07(f) of this regulation.

(C) The tests listed in Table 2 are exempt from the requirements of Section 3.07 of Regulation I.

Table 2
Initial Installation Stage 1 Compliance Tests

	CARB Tests Required	CARB Test Procedures ¹	Date of Adoption
Stage 1 EVR Vapor Recovery Systems	Leak Rate Test ²	TP-201.1C or TP-201.1D	October 8, 2003
	Static Pressure Decay ³	TP-201.3	March 17, 1999
	Static Torque of Adaptors	TP-201.1B	October 8, 2003
	Leak Rate/ Cracking P/V ⁴	TP-201.1E	October 8, 2003

¹Or test procedures that have been approved by CARB as equivalent to CARB procedures.

²TP-201.1C has no overfill prevention device and TP-201.1D is required for drop tubes with overfill prevention.

³Except that test procedure TP-201.3B (dated 4/12/96) shall be used for above-ground storage tanks.

⁴The test procedures are also listed in Exhibit 2 of the CARB Executive Order.

(2) Stage 2 Testing Requirements

(A) Owners or operators must obtain the Stage 2 compliance tests identified in Table 3 annually, and each test must be conducted in accordance with the test procedures identified in Table 3. In addition, each test shall be completed no less than 335 days and no more than 395 days since the last annual test.

(B) For stations with vapor-balance systems, the first annual test completed after September 1, 2011 shall be completed on an annual schedule as specified above or by January 15, 2012, whichever date comes first.

(C) Owners or operators must obtain a Static Pressure Decay Test semiannually. One test shall be completed during the annual testing required in Section 2.07 (e)(2)(A) of this regulation and the other semiannual test shall be completed no less than 150 days and no more than 210 days since the last Static Pressure Decay Test.

(D) Owners or operators must obtain the Stage 2 compliance tests identified in Table 3 after initial installation of any Stage 2 system and prior to dispensing fuel commercially.

(E) Stage 2 compliance tests shall be performed by persons who are certified as required in Section 2.07(f) of this regulation.

(F) The tests listed in Table 3 are exempt from the requirements of Section 3.07 of Regulation I.

Table 3
Annual Stage 2 Compliance Tests

Stage 2 Vapor Recovery Systems	CARB Tests Required	CARB Test Procedures ¹	Date of Adoption
All Vapor-Balance	Static Pressure Decay ²	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Tank-Tie Test ³	TP-201.3C	March 17, 1999
	Static Torque of Adaptors ⁴	TP-201.1B	October 8, 2003

Stage 2 Vapor Recovery Systems	CARB Tests Required	CARB Test Procedures ¹	Date of Adoption
All Vacuum-Assist ⁵	Static Pressure Decay ²	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test ³	TP-201.3C	March 17, 1999
	Static Torque of Adaptors ⁴	TP-201.1B	October 8, 2003

¹Or test procedures that have been approved by CARB as equivalent to CARB procedures.

²For static pressure decay test, test procedure TP-201.3B (dated 4/12/96) shall be used for above-ground storage tanks.

³Tank-tie test must be conducted at least once, or after any tank configuration changes to show the tanks are manifolded. The tank-tie test records must be kept on-site to verify compliance.

⁴For static torque of adaptors, testing is required only for stations equipped with dual-point Stage 1 vapor recovery systems.

⁵Vapor return line vacuum integrity tests shall be conducted on each vacuum-assist system equipped with a central vacuum pump annually, in accordance with Exhibit 4 of CARB Executive Orders G-70-165 and G-70-186, as applicable.

(3) Failed Compliance Tests

Owners or operators must notify the Agency in writing within 24 hours of any failed compliance tests, if the defective equipment cannot be repaired or replaced by the person conducting the test on the day of the test. If the defective equipment cannot be repaired by the close of the next business day following the failed compliance test, the owner or operator must stop receiving and/or dispensing gasoline from the defective equipment until it is repaired and retested, and passes all required compliance tests. The requirements in Section 2.07 (e)(3) of this regulation do not include any operation of equipment necessary to conduct a retest. Equipment operation after a failed compliance test is evidence of a continuing violation until a passing test has been completed for that equipment.

(4) Test Reports

(A) After the testing required by Section 2.07 of this regulation has been conducted, the owner or operator must obtain a written test report.

(B) The written report must include the following information:

- name and address of the person(s) who conducted each test,
- date of the testing,
- equipment tested,
- test procedures or methods used,
- results of the tests, and
- any repairs made or corrective actions taken necessary to pass the tests.

(C) Owners or operators must keep a copy of the test report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

(5) Compliance Testing Activity Reports

(A) Persons completing the Stage 1 or Stage 2 testing identified in Section 2.07 of this regulation shall submit compliance testing activity reports to the Agency. Compliance testing activity reports must be submitted on approved forms through the Agency website and must be received by the Agency no later than 2 days after completion of the compliance test on-site.

(B) Compliance testing activity reports shall include, but not be limited to, the following information:

- identification of the facility,
- date of the testing,
- identification of each test conducted,
- results (pass/fail) of each test conducted,
- name of the person(s) who conducted each test and current certification credential information for each such person, and
- statement of whether repairs were completed, and if so, description of all repairs undertaken and/or completed.

(f) Certification for Persons Testing or Installing

(1) Persons testing or installing CARB-certified Stage 1 or Stage 2 vapor recovery equipment as required by Section 2.07 of this regulation must be certified by the International Code Council or other association that the Agency has determined provides an examination where persons can demonstrate their knowledge of regulatory codes, standards, and practices pertaining to CARB-certified Stage 1 or Stage 2 vapor recovery equipment, or have passed another qualifying examination approved by the Agency.

(2) Persons testing or installing CARB-certified Stage 1 or Stage 2 vapor recovery equipment must be certified every other year. Such persons must possess a valid certification at the time of performing any testing or installation of CARB-certified Stage 1 or Stage 2 vapor recovery equipment required by Section 2.07 of this regulation. Subsequent certifications must occur within 2 years of the anniversary date of a person's first certification under Section 2.07(f) of this regulation.

(3) All testing must be conducted consistent with the requirements of Section 2.07(e) of this regulation.

(4) The certification requirements in Section 2.07(f) of this regulation do not apply to owners or operators of gasoline dispensing facilities.

(g) Recordkeeping Requirements for Owners or Operators

Owners or operators must keep a copy of all records required by this rule on-site at the facility and available for inspection for at least 2 years after the date the record was prepared.

WSR 10-12-101
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-02—Filed June 2, 2010, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-06-082.

Title of Rule and Other Identifying Information: Joint Underwriting Association (JUA) for midwifery and birthing centers malpractice insurance.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on July 7, 2010, at 10:00 a.m.

Date of Intended Adoption: July 8, 2010.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by July 6, 2010.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by July 6, 2010, TTY (360) 586-02421 [586-0241] or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will amend the existing rule to: Allow other entities to act as the administrator for the JUA, allow the JUA board the discretion to indemnify the servicing company for acting on its behalf, change the composition of the board of the directors, change the reporting requirements of the JUA, change the circumstances under which the board may refuse or cancel coverage for a licensee, update citations and terms which have changed as result of statutory amendments, set forth the order of distribution of the assets of the JUA upon dissolution, and allow the JUA to distribute excess reserves.

Reasons Supporting Proposal: The current rule limits the entity that may act as the administrator for the midwife JUA to an authorized insurer. By permitting other entities to become the administrator for the JUA, it provides the opportunity to the JUA to reduce its administrative costs and permit the board the discretion to indemnify the administrator for its activities on behalf of the board. The current rule does not provide for the distribution of the assets of the JUA upon its dissolution or if it acquires excess reserves.

Statutory Authority for Adoption: RCW 48.02.060 and 48.87.100.

Statute Being Implemented: Chapter 48.87 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule change does not impose any new requirements on a private business as a result nor will any new sanctions, fees or penalties be imposed on any private business as a result of its approval and implementation. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule change contains a set of minor or nonsubstantive amendments to the existing rules and three changes of substance: (A) Allowing a noninsurer to be the designated service company if so designated by the midwifery JUA and allowing the JUA board to indemnify its appointed service company (and its staff) for any legal defense costs incurred as a result of their duties; (B) requiring the JUA board to determine and establish a minimum loss reserve account; and (C) providing an order of distribution of any excess funds left if the association is deactivated or dissolved. As expressly allowed by chapter 48.87 RCW, these proposed rules represent the commissioner's interpretation of the law regarding necessary administrative procedures for the midwifery JUA. No new requirements will be imposed on a private business as a result nor will any new sanctions or penalties be imposed on any private business. Therefore, no cost-benefit analysis is required.

June 2, 2010

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Association" means the joint underwriting association established pursuant to the provisions of chapter 48.87 RCW.

"Board" means the governing board of the association.

"Licensee" means any person or birth center facility licensed to provide midwifery services pursuant to chapters 18.46, 18.50, and ((18-88)) 18.79 RCW.

"Market assistance plan" or "MAP" means the voluntary consumer assistance plan established pursuant to the provisions of RCW 48.22.050.

"Member insurer" means any insurer that on or after July 25, 1993, possesses a certificate of authority to write medical malpractice, general casualty insurance, or both, within this state.

"Midwifery and birth center insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence or malpractice in rendering professional service by any licensee.

"Service ((insurer)) company" means any insurance company or person designated by the association ((and approved by the commissioner)) to ((issue policies pursuant to this)) act on behalf of the association under chapters 48.87 RCW and 284-87 WAC.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-050 Administration. (1) The association ((shall)) must be administered by a governing board, subject to the supervision of the commissioner, and operated by a ((manager)) service company or companies appointed by the board.

(2) The board ((shall)) must consist of seven members. ((Four)) Five board members ((shall)) must be member insurers appointed by the commissioner. ((A fifth board member shall be the insurer designated as the service insurer for the association (or, if there is more than one service insurer, the fifth board member shall be such service insurer as the commissioner designates as the board member).)) The other two board members ((shall)) must be licensees who are appointed by the commissioner to so serve, neither of whom shall ((be interested)) have an interest, directly or indirectly, in any insurer except as a policyholder. Three of the original board members ((shall)) must be appointed to serve an initial term of three years, two ((shall)) must be appointed to serve an initial term of two years, and the remaining ((shall)) must be appointed to serve a one-year initial term. All other terms ((shall)) must be for three years or until a successor has been appointed. Not more than one member insurer in a group under the same management or ownership shall serve on the board at the same time. At least one of the ((four)) five insurers on the board ((shall)) must be a domestic insurer. Members of the board may be removed by the commissioner for cause.

(3) The association must indemnify each person serving on the board or any subcommittee thereof, each member insurer of the association, and each officer and employee of the association ((shall be indemnified by the association against)) all costs and expenses actually and necessarily incurred by him, her, or it in connection with the defense of any action, suit, or proceeding in which he, she, or it is made a party by reason of his, her, or its being or having been a member of the board, or a member or officer or employee of the association, except in relation to matters as to which he, she, or it has been judged in such action, suit, or proceeding to be liable by reason of ((willful)) willful misconduct in the performance of his, her, or its duties as a member of such board, or member, officer, or employee of the association. This indemnification shall not be exclusive of other rights as to which such member, or officer, or employee may be entitled as a matter of law.

(4) The association at the discretion of the board may agree to indemnify its appointed service company or companies and its staff from all costs and expenses actually and necessarily incurred by them in defense of any action, suit, or proceeding in which they are made a party by reason of their being or having been a service company of the association, except in relation to matters as to which they have been judged by a court of competent jurisdiction, to have engaged in willful misconduct in the performance of their duties as a service company on its behalf by staff.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-060 General powers and duties of the board. (1) Within thirty days after the appointment of its members by the commissioner, the board ((shall)) must prepare and adopt a plan of operation and bylaws consistent with this chapter, subject to approval by the commissioner. In a timely manner thereafter, the board ((shall)) must take all actions necessary to prepare the association to receive appli-

cations and issue policies, when and if the commissioner activates the association as provided in WAC 284-87-040. These actions ((shall)) must include the preparation of all necessary policy forms and rating information to be filed with the commissioner for approval and all necessary operating manuals and procedures to be followed.

(2) The board shall meet as often as may be required to perform the general duties of the administration of the association or on the call of the commissioner. Four members of the board shall constitute a quorum as long as at least one of ((whom shall be)) those present is a licensee board member.

(3) The board may appoint a ((manager)) service company or companies, who shall serve at the pleasure of the board, to perform any duties necessary or incidental to the proper administration of the association, including the hiring of necessary staff.

(4) The board shall annually furnish to ((all member insurers of the association and to)) the commissioner a written report of operations. All insurer members of the association may receive a copy of the report from the association upon request.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-080 Statistics, records, and reports. (1) The association ((shall)) must maintain statistics on business written and shall make the following quarterly report to the commissioner:

(a) Number of applications received by the association;

(b) Number of applications accepted by the association and the total and average premiums charged, including the high and low premiums;

(c) ((Number of risks declined;

(d) Number of risks conditionally declined and the number ultimately accepted after having been conditionally declined; and

(e)) Number of ((risks cancelled)) policies canceled; and

(d) Claims activity.

(2) In addition to statistics, the association ((shall)) must maintain complete and separate records of all business transactions, including copies of all policies and endorsements issued by the association, and records of reasons provided for each declination of coverage or cancellation of coverage, including the results of any on-site inspections, or investigations of applicants or insureds or their employees. Information concerning individual licensees ((shall)) must be kept confidential to the extent permitted by law.

(3) Regular reports of the association's operations ((shall)) must be submitted to all members of the board and to the commissioner, ((such)) the reports ((to)) must include, but not necessarily to be limited to, premiums written and earned, losses, including loss adjustment expense, paid and incurred, all other expenses incurred, outstanding liabilities, and, at least once a year, the proposed annual budget of the association for the next fiscal year.

(4) The books of account, records, reports, and other documents of the associations ((shall)) must be open to the commissioner for examination at all reasonable times.

(5) The books of account, records, reports, and other documents of the association shall be open to inspection by members only at ((such)) times and under ((such)) conditions as the board shall determine.

(6) The books of account of any and all servicing ((insurers)) companies may be audited by a firm of independent auditors designated by the board.

AMENDATORY SECTION (Amending Order R 94-11, filed 6/2/94, effective 7/3/94)

WAC 284-87-090 Eligibility of licensees for coverage. Any licensee that is unable to obtain midwifery or birthing center insurance with liability limits of at least one million dollars per claim and three million dollars per annual aggregate, or ((such)) other minimum level of mandated coverage as determined by the department of health, from the voluntary insurance market or from any market assistance plan organized pursuant to RCW 48.22.050, is eligible to apply for coverage through the association. The association's service ((insurer)) company or companies shall promptly process such application and, if the licensee is judged to be an acceptable insurable risk, offer coverage to the licensee. In view of the purpose of chapter 48.87 RCW, every licensee will be presumed to be an acceptable insurable risk for the association. To refuse or cancel coverage to any licensee meeting the other eligibility requirements of this section, the association must have the prior written approval of the commissioner. The commissioner will grant such approval only if the association demonstrates that ((extraordinary)) circumstances justify refusing or canceling coverage to ((such individual)) the licensee.

AMENDATORY SECTION (Amending Order R 94-11, filed 6/2/94, effective 7/3/94)

WAC 284-87-100 Standard policy coverage—Premiums. (1) All policies issued by the association ((shall)) must have liability limits of at least one million dollars per claim and three million dollars per annual aggregate, or ((such)) other minimum level of mandated coverage as determined by the department of health, and shall be issued for a term of one year.

(2) Premiums ((shall)) must be based on the association's rate filings approved by the commissioner in accordance with chapter 48.19 RCW. ((Such)) The rate filings shall provide for modification of rates for licensees according to the type, size, and past loss experience of each licensee, and any other differences among licensees that can be demonstrated to have a probable effect upon losses.

(3) Consistent with the nonprofit character of the association, rates for policies issued by the association ((shall)) must be set so that the expected profit (that is, premiums plus investment income minus the sum of expenses and losses) is zero.

(4) The association is exempt from the requirements of WAC 284-24-065.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-110 Renewal of policies. (1) Policies written by the association will not automatically renew. To obtain continuing coverage by the association, a licensee must again satisfy initial eligibility requirements under WAC 284-87-090 at the end of the expiring policy term.

(2) The association shall notify covered licensees in writing at least ((forty-five)) ninety days prior to the expiration of a policy term of the need to submit a new application for coverage to the association to continue coverage.

(3) If the association fails to provide the required written notice, the existing policy shall continue in force until the association has provided the required notice. In such case, premium shall be charged the licensee on a pro rata basis for coverage during the extended coverage period.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-130 Right of appeal. (1) Any applicant or insured, licensed pursuant to chapter 18.46, 18.50, or 18.88 RCW, shall have a right of appeal to the commissioner, including the right to appear ((personally)) before the commissioner or his or her designee, if requested by the person seeking appeal, from any decision by the board.

(2) Appeals to the commissioner under this provision shall be handled in accordance with chapters 48.04 and 34.05 RCW.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-140 Cooperation of ((agents and brokers)) producers. All licensed ((insurance agents and brokers shall)) producers must provide full cooperation in carrying out the aims and the operation of the association.

AMENDATORY SECTION (Amending Order R 93-18, filed 12/30/93, effective 1/30/94)

WAC 284-87-150 Commissions. The association shall pay commissions as established by the board on policies issued ((pursuant to)) under this chapter to the licensed ((agent or broker)) producer designated by the applicant.

NEW SECTION

WAC 284-87-155 Reserves and surplus. (1) The board shall determine and establish a minimum loss reserve account to offset infrequent severe losses.

(2) If the board, in its sole discretion, determines that the reserve account is in excess of an amount necessary to pay potential infrequent severe losses, the association may, but is not obligated to:

(a) Refund to the member insurers all or any portion of any assessment that was received from the member insurers in the same pro rata amount the member insurer was assessed and paid. No return to a member insurer may exceed the

aggregate amount paid to the association by the member insurer.

(b) After all assessments received by the association from member insurers are refunded to the member insurers, the association may make a one-time premium adjustment to the insured licensees.

NEW SECTION

WAC 284-87-165 Distribution of assets upon dissolution of the association. If the association is deactivated or dissolved and has a positive asset balance, the excess funds will be distributed in the following order:

(1) For the purchase of prior acts coverage from the successor insurer for all active licensees insured by the association.

(2) For the return of one hundred percent of unearned premium to all active licensees insured by the association.

(3) For the return of remaining funds to the member insurers on a pro rata formula, based upon the total of all assessments paid in throughout the lifetime of the association's operation. Returns to a member insurer must not exceed the aggregate amount paid to the association by the member insurer.

(4) For the distribution of any remaining balance to active licensees insured by the association at the time of deactivation or dissolution, according to a pro rata formula based upon the total of all premiums paid to the association. Distribution amounts paid to a licensee must not exceed the aggregate amount paid to the association by the licensee. Pro rata amounts of less than twenty-five dollars will not be returned.

(5) Any remaining balance will utilized at the discretion of the commissioner.

1. Establish the information required for the filing of rates for title insurance under RCW 48.29.147;

2. Establish standards for title insurance rate filings to satisfy RCW 48.29.147;

3. Identify statistics that title insurance agents must collect and report to the title insurers that have appointed them, in order that the insurers can file accurate and appropriate expense data to support their rate filings;

4. Identify title insurance statistics that title insurers and title insurance agents must collect and report to the commissioner in order for the commissioner to determine whether the title insurance rates comply with chapters 48.143 and 48.147 RCW;

5. Establish a date by which title insurers must file every manual of rules and rates, rating plan, rate schedule, minimum rate, class rate, and rating rule, and every modification of any of these filings under RCW 48.29.143 and 48.29.147;

6. Require title insurers to file rates and forms through the system for electronic rate and form filing (SERFF).

Reasons Supporting Proposal: RCW 48.29.140 was amended and RCW 48.29.143 and 48.29.147 were enacted by the 2008 legislature. These statutes amend and change the manner in which title insurers file title insurance rates with the commissioner and provide that the commissioner will establish a date for the change from the current rate filing system to the new system under these new statutes.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.005.

Statute Being Implemented: RCW 48.29.140, 48.29.-143, and 48.29.147.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; **Implementation and Enforcement:** Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the authorized title insurance companies active in the state of Washington qualify as small business under the law, therefore no small business economic impact statement (SBEIS) is required as to them.

The two primary business entity groups affected by the proposed title rate rules (R-2009-01) are title insurers and title insurance agents. None of the domestic title insurers currently active in Washington qualifies as a small business under the law; therefore no SBEIS is required with regard to them.

There are domestic title insurance agents currently active in Washington state that qualify as small businesses under the law. However, the proposed title rate rules (R-2009-01) impose only one requirement on these small businesses - the requirement that they report by April 1 premium, policy count and expense data annually to each title insurer for which they produced business (proposed WAC 284-29A-100) using instructions called the *Title Insurance Agent Annual Report* to be found on the commissioner's web site.

WSR 10-12-103
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-01—Filed June 2, 2010, 7:49 a.m.]

Supplemental Notice to WSR 10-07-130.

Preproposal statement of inquiry was filed as WSR 09-02-075.

Title of Rule and Other Identifying Information: Title insurance rate filing and reporting rules and procedures.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on July 8, 2010, at 10:00 a.m.

Date of Intended Adoption: July 9, 2010.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by July 7, 2010.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by July 7, 2010, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will:

Subsection (2)(a) in this proposed section requires the reporting of: (a) Title insurance premiums for all of the agent's business and specifically for the title insurer to which the report is sent; and (b) the number of policies for all of the agent's business and specifically for the title insurer to which the report is sent. Accumulation of much of this information is part of normal business activity; for purposes of reporting to its underwriters, title agents will necessarily track the number of policies, who they were insured with and the premiums involved. The primary new step being required will be to pull together annual totals for premiums and policies and report this information to the limited number of title insurers for whom each agent is appointed. This will constitute, at best, a minor cost as defined by the law; for title agents who must report under RCW 48.29.015 the tracking of total title orders is already necessary to meet the reporting of percentages that is required. As a less than minor cost item this does not require an SBEIS.

Subsection (2)(b) in this proposed section requires reporting an expense data breakout by title insurance agents to each title insurer for which they produce business. The expenses being reported are essentially the same expense categories being tracked and reported on IRS forms commonly filed annually by these same businesses (for example, form 1120—the U.S. Corporation Income Tax Return and form 1065 U.S. Return of Partnership Income and their related attachments). As such, the accumulation of this information is part of normal business activity; reporting it to the limited number of title insurers for whom that agent is appointed will be, at best, a minor cost as defined by the law and does not require an SBEIS.

Complying with subsection (2)(c) in this proposed section requires: (a) Filing an explanation of how expenses are allocated between title operations and escrow operations of the title insurance agent; and (b) demonstrating that expenses named in 284-29A-070(1) have been excluded. Filing an explanation of how expenses are allocated requires only a logical explanation of the methodology for making that allocation for the appropriate cost items listed in proposed 284-29A-110 (2)(b) and then showing the resultant totals for escrow expenses; the insurer receiving this report might request explanation if escrow expenses exceeded fees charged. This reporting step seems to require only a little extra time and therefore should be only a minor cost item under the law. Demonstrating that expenses named in 284-29A-070(1) have been excluded from rate setting requires a demonstration that fees have been paid covering the full cost of such expenses; assuming a title agent is complying with the law, this accounting should again be well within the "minor cost" threshold found in the law.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

June 2, 2010

Mike Kreidler

Insurance Commissioner

Chapter 284-29A WAC

TITLE INSURANCE RATES

NEW SECTION

WAC 284-29A-010 Finding and purpose. Title insurance protects against financial loss from defects in insured titles of real property. Losses from title insurance policies are not the primary cost to title insurers and title insurance agents. The primary costs incurred by title insurers and title insurance agents are maintenance of tract indexes and research to find title defects before the policies are issued. Title insurance is regulated differently than property and casualty insurance because loss ratios for title insurance are relatively low and expense ratios are fairly high. To implement and administer chapter 48.29 RCW, the commissioner needs detailed information about the costs underlying title insurance policies to regulate rates and ensure consumers are offered fair and equitable premiums. The purpose of this chapter is to adopt rules that establish:

- (1) Standards for determining whether a premium rate complies with RCW 48.29.143;
- (2) Standards and procedures that apply to RCW 48.29.147;
- (3) The date after which title insurers must use rates that have been filed and approved under RCW 48.29.147; and
- (4) Requirements for submitting all rate filings through SERFF.

NEW SECTION

WAC 284-29A-020 Definitions. The definitions in this section apply to this chapter:

"Commitment" means the same as in RCW 48.29.010 (3)(c).

"Complete filing" means a package of information containing rates, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Date filed" means the date a complete filing has been received and accepted by the commissioner.

"Filer" means a person, organization or other entity that files title insurance rates with the commissioner for a title insurer.

"NAIC" means the National Association of Insurance Commissioners.

"Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

- (b) Explains errors or omissions in the filing; or
- (c) Disapproves the filing under RCW 48.29.147.

"Policy" means a title policy as defined in RCW 48.29.010 (3)(a), and includes endorsements.

"Producer" means:

- (a) A "producer of title insurance" as defined in WAC 284-29-205(8); and
- (b) An "associate of producers" as defined in RCW 48.29.010 (3)(f).

"Rate" or "rates" means all classification manuals, rate and rule manuals, rating plans, rating schedules, minimum rates, class rates, and rating rules that title insurers must file under RCW 48.29.147.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

"Title insurance agent" or "agent" has the same meaning as in RCW 48.17.010(15).

"Title insurance" has the same meaning as in RCW 48.11.100.

"Title insurer" means a title insurance company authorized to conduct title insurance business in this state under chapter 48.05 RCW.

NEW SECTION

WAC 284-29A-030 Transition to prior approval system. (1) On and after January 1, 2012, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, 2011, for rates to be effective on January 1, 2012. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, 2012.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after January 1, 2012.

NEW SECTION

WAC 284-29A-040 Supporting information required under RCW 48.29.147. (1) When a title insurer files rates with the commissioner, the title insurer must demonstrate that the proposed rates comply with RCW 48.29.143. To the extent possible:

(a) Each title insurer must provide credible data to support the proposed rates. If credible data are not available, the title insurer must provide supporting documentation that describes its process for developing the proposed rates and demonstrates that they meet the requirements of RCW 48.29.143.

(b) Data used to support the proposed rates should be from the state of Washington. If data from other states are used, the title insurer must explain why those data are similar to what would be expected in Washington.

(2) If a title insurer proposes to use rates that are identical to the rates of another title insurer, the rate filing must include supporting information that demonstrates that the title insurer's proposed rates meet the requirements of RCW 48.29.143. It is not sufficient simply to state that the proposed rates are identical to those of another title insurer or that the rates are being filed for competitive purposes.

(3) Under RCW 48.29.143(2), a title insurer's provision for underwriting profit must be consistent with its cost of capital. The rate filing must demonstrate that expected underwriting profit, plus expected investment income on reserves and surplus, minus expected federal income taxes corre-

sponds to an appropriate target after-tax rate of return on the title insurer's equity or net worth.

(4) The rate filing must provide sufficient information so that the commissioner may determine whether the proposed rates comply with RCW 48.29.147(3).

NEW SECTION

WAC 284-29A-050 Unfairly discriminatory rates. Situations in which the rates are unfairly discriminatory under RCW 48.29.143(1) include, but are not limited to:

(1) Rating rules that provide for a waiver of the cancellation fee or reduction of the cancellation fee, after a commitment has been issued, to an amount that is less than the expected average cost for the title insurer and its agents to issue a commitment in the defined geographical area covered by the rating rules;

(2) Negotiation or bidding of price;

(3) Rating rules that do not have a definite charge for every bracket of coverage;

(4) Discounts not provided to all qualifying risks; and

(5) Rating plans in which policies:

(a) Generating higher premiums subsidize smaller policies; or

(b) From one geographical area subsidize those from another geographical area.

(6) A title insurer's application of more than one rate schedule to similarly situated risks in a county or other defined geographical area. For example, it is unfairly discriminatory for a title insurer to use different rate schedules for business produced by different title insurance agents in a specific rating territory.

NEW SECTION

WAC 284-29A-060 Judgment rating. If the rates for a title insurance policy (including endorsements) depend in whole or in part upon the judgment of the title insurer or agent, the title insurer must:

(1) File rating rules that describe the specific criteria used for making the rates;

(2) Document the rationale for each judgment rate referencing the filed rating rule;

(3) Retain supporting documentation required under this section for at least three years following the effective date of the policy;

(4) Make the documentation available for examination by the commissioner on request; and

(5) Treat all similarly situated risks equitably. If a title insurer files a judgment rate that reduces the rate for a particular endorsement to a percentage of the base rate, then the title insurer must reduce the rate for all similarly situated risks that meet the same criteria. For example, if the title insurer charges an insured that meets specific criteria a premium of ten percent of the base rate for the endorsement, another insured meeting the same criteria must also be charged a premium of ten percent of the base rate.

NEW SECTION**WAC 284-29A-070 Referral fees and marketing expenses.**

(1) Under RCW 48.29.210 and WAC 284-29-200 through 284-29-265, title insurers and title insurance agents:

(a) Are prohibited from giving anything of value to any person for the referral of title insurance business;

(b) Are prohibited from giving most things of value to persons who are in a position to refer or influence the referral of title insurance business;

(c) Must charge and collect for the costs of providing certain listed information, services, and other items of value that title insurers and their agents give to persons who are in a position to refer or influence the referral of title insurance business; and

(d) Are permitted to give specified things of value to producers of title insurance at no charge.

(2) Therefore, in making rates a title insurer must not include income or expenses related to the costs of:

(a) Giving anything of value to any person for the referral of title insurance business;

(b) Providing information, services, and other items of value that a title company is prohibited from giving to a producer of title insurance business under RCW 48.29.210 and WAC 284-29-200 through 284-29-265; and

(c) Providing information, services, and other items of value that the title insurer or a title insurance agent may give to producers if the title insurer or title insurance agent is paid for the information, services, or other items identified in WAC 284-29-200 through 284-29-265.

(3) However, in making rates a title insurer may include its income or expenses related to the costs of giving permitted things of value to producers of title insurance business and the title insurer's and title insurance agents' other marketing expenses.

NEW SECTION**WAC 284-29A-080 Expense component of rates.**

(1) In support of the expense component of the rates, the title insurer must:

(a) Include estimates of expected expenses to issue title insurance policies and commitments;

(b) Exclude the expected expenses related to escrow and other activities not directly related to title insurance;

(c) Exclude the expected expenses described in WAC 284-29A-070(2); and

(d) Show how those estimates were calculated and demonstrate how those estimates are connected to the proposed rates.

(2) The expense categories that must be considered when making rates include:

(a) Employees' salaries and wages;

(b) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;

(c) Employee benefits;

(d) Rent;

(e) Insurance;

(f) Legal expense;

(g) Licenses, taxes, and fees;

- (h) Title plant expense and maintenance;
- (i) Office supplies;
- (j) Depreciation;
- (k) Automobile expense;
- (l) Communication expense;
- (m) Education expense;
- (n) Bad debts;
- (o) Interest expense;
- (p) Employee travel and lodging;
- (q) Loss and loss adjustment expense;
- (r) Accounting and auditing expense;
- (s) Public relations expense; and
- (t) Other specifically identified expenses.

(3) To support the agent commission component of rates, it is not sufficient to state the commission rate and perform calculations based on that percentage. The title insurer's rate filing must include data that supports the expense component that applies to its title insurance agents.

(4) The supporting information required under this section may aggregate the data from agent reports received by the title insurer in one or more years under the provisions of WAC 284-29A-110.

NEW SECTION

WAC 284-29A-090 Rates must include all costs. All premium rates filed under RCW 48.29.147 and this chapter must include all costs related to the title insurance transaction, including the costs to:

- (1) Maintain the tract indexes;
- (2) Search and examine the title or title to be insured;
- (3) Issue preliminary commitments;
- (4) Determine that each insured estate has been created, conveyed or modified as shown in the policy;

(5) Evaluate coverage and amend the policy as needed with appropriate and reasonable exceptions, conditions or modifications; and

(6) Any other direct or indirect cost associated with performing these activities.

NEW SECTION

WAC 284-29A-100 Effect of premium split on filing of premium rates. If the title agency contracts between a title insurer and the title insurer's appointed title agents provide for a split of premiums between the title insurer and the title insurance agent, the title insurer must file premium rate schedules using supporting data and information that are consistent with that contractual premium split. The title insurer's base rates should be consistent with its actual contractual split of premiums between the title insurer and its agents. The title insurer's use of more than one premium split with its agents, if any, must be addressed through the filing of rating rules that specify the situations in which other premium splits are used and the adjustments that result from their use.

NEW SECTION

WAC 284-29A-110 Title insurance agents must report data to title insurers. (1) Each title insurance agent must report premium, policy count, and expense data annu-

ally to each title insurer for which it produces business in the state of Washington by April 1st of each year. These data must be reported following the instructions published by the commissioner on the commissioner's web site at www.insurance.wa.gov. These instructions, called the *Title Insurance Agent Annual Report*, are incorporated into this chapter by reference.

(2) Each annual report required by this section must include:

(a) The following premium and policy count data:

(i) Title insurance premiums for all of the agent's business; and

(ii) Title insurance premiums produced for the title insurer to which the report is sent.

(iii) Number of policies issued by all of the title insurers with which the agent does business; and

(iv) Number of policies issued by the title insurer to which the report is sent.

(b) The following expense data related to issuing title insurance policies and commitments for all of the agent's business, excluding all expenses related to escrow and other activities not directly related to title insurance:

(i) Employees' salaries and wages;

(ii) Owners' and partners' salaries and wages representing reasonable compensation for personal services actually performed by owners and partners;

(iii) Employee benefits;

(iv) Rent;

(v) Insurance;

(vi) Legal expense;

(vii) Licenses, taxes, and fees;

(viii) Title plant expense and maintenance;

(ix) Office supplies;

(x) Depreciation;

(xi) Automobile expense;

(xii) Communication expense;

(xiii) Education expense;

(xiv) Bad debts;

(xv) Interest expense;

(xvi) Employee travel and lodging;

(xvii) Loss and loss adjustment expense;

(xviii) Accounting and auditing expense;

(xix) Public relations expense; and

(xx) Other specifically identified expenses.

(c) An explanation that:

(i) Describes how expenses are allocated between the title operations and escrow or other operations of the title insurance agent; and

(ii) Demonstrates that the expenses described in WAC 284-29A-070(2) have been excluded.

(d) The estimated average cost to issue a title insurance commitment.

(3) If a title insurer does not receive a report required under this section by April 1st of each year, the title insurer must notify the commissioner by April 15th. This notice must include the name of the agent that did not send the report on time.

NEW SECTION

WAC 284-29A-120 Filing documents incorporated by reference into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site and on the commissioner's web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-29A-130 General rate filing rules. Filers must submit complete rate filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State SERFF Title Insurance Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov). All rate filings must comply with these rules:

(1) Filers must submit all rate filings and related documents to the commissioner electronically using SERFF.

(2) Filers must send all written correspondence related to a rate filing in SERFF.

(3) Each rate filing must be accurate and internally consistent.

(4) Filers must not submit combined rate and form filings.

NEW SECTION

WAC 284-29A-140 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-29A-120. If the commissioner rejects a filing, the title insurer has not filed rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-29A-150 Responding to objection letters. If the commissioner disapproves a filing under RCW 48.29.147, the objection letter will state the reason(s) for disapproval, including relevant law and administrative rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response includes:

(a) A separate response to each objection; and

(b) If appropriate, revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-29A-160 Filing authorization rules. A title insurer may authorize a third-party filer to file rates on its behalf. For the purposes of this section, "third-party filer" means a person or entity in the business of providing insurance regulatory compliance services.

(1) If a title insurer delegates filing authority to a third-party filer, each filing must include as supporting documentation a letter signed by an officer of the title insurer authorizing the third-party filer to make filings on behalf of the title insurer.

(2) The title insurer may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the title insurer.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the title insurer.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

June 2, 2010

David Brenna

Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 09-20-088, filed 10/6/09, effective 11/6/09)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "regionally accredited institution of higher education," as defined in WAC 180-78-010 and 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended ((~~or regained~~)).

(4) "Certificate reinstatement" means the process whereby the validity of an expired certificate is regained.

(5) "Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.

(6) "Expired certificate" means a teacher certificate that can only be reinstated under WAC 181-79A-251.

(7) "Classroom teaching" means instructing pupils in an instructional setting.

((~~7~~)) (8) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from a regionally accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 181-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that

**WSR 10-12-106
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed June 2, 2010, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-21-057.

Title of Rule and Other Identifying Information: Revises chapter 181-79A WAC. Amends certification issuance and renewal sections to address length of residency certification and attaining professional certification. Revises WAC 181-79A-030, 181-79A-123, 181-79A-145, 181-79A-250, and 181-79A-253. Creates new WAC 181-79A-251.

Hearing Location(s): Red Lion Hotel, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, on July 21, 2010, at 8:30 a.m.

Date of Intended Adoption: July 21, 2010.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 12, 2010.

Assistance for Persons with Disabilities: Contact David Brenna by July 12, 2010, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes length of residency license to reflect teacher assessment requirements for professional certification. Legislative mandate.

Reasons Supporting Proposal: Legislative mandate.

Statutory Authority for Adoption: RCW 28A.410.210.

Statute Being Implemented: RCW 28A.410.270.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202.

((6)) (9) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention.

((7)) (10) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from a regionally accredited college or university.

((8)) (11) "Credit hour(s)" means credit (normally 100 level or above) awarded by a regionally accredited institution of higher education.

((9)) (12) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

((10)) (13) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

((11)) (14) Teacher "professional growth team" means a team comprised of the candidate for professional certification, a colleague specified by the candidate, a provider of support to the candidate, if the candidate chooses to employ a support provider, and a representative from the school district or state-approved private, state agency providing education for children in which the candidate teaches or has taught.

((12)) (15) "Individual professional growth plan" means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207.

((13)) (16) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

((14)) (17) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

(18) "Approved private school" means any organization of institution providing educational services to children including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-123 Certificates—Previous standards. (1) Certificates issued under previous standards which were issued for a specific term shall continue to be effective for that term.

(2) Certificates issued under ((previous)) standards prior to September 1, 2000, which were issued for an indefinite period shall continue to be in effect.

(3) All persons who hold any standard teacher, administrator, or specialized personnel certificate issued under previous standards of the professional educator standards board shall be issued a continuing certificate at such time as it is necessary for them to reissue a standard certificate or on application and payment of the fee as specified in WAC 181-79A-130.

(4) Any person who holds a provisional principal's or provisional superintendent's certificate under previous standards of the professional educator standards board shall be issued upon application, including payment of applicable fees, a continuing administrator's certificate for the appropriate role and such certificates shall be subject to the continuing education requirements of chapter 181-85 WAC.

(5) Any person holding a provisional certificate as a school nurse under provisions of chapter 180-84 WAC shall be granted a continuing certificate.

(6) All persons who hold a valid initial certificate granted under previous standards of the professional educator standards board shall be authorized to meet requirements for continuing certification as set forth in the relevant previous standards except as noted below in subsections (7), (8) or (9) of this section.

(7) Any person with a valid initial teacher's certificate granted under previous standards of the professional educator standards board may renew that certificate once after August 31, 2000. The individual shall meet requirements for and apply for the continuing certificate by the expiration date on the renewed certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for initial renewal or continuing certificate under the provisions of WAC 181-79A-250 (1)(a) prior to their expiration date, but whose initial certificate expired after August 31, 2000, because they applied for certification too late, may apply once for such renewal or continuing certificate and will be issued such certificate.

(8) Any person with a valid initial administrator certificate granted under previous standards of the professional educator standards board shall meet requirements for and

apply for the continuing certificate by the expiration date on the initial certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for a continuing certificate under the provisions of WAC 181-79A-250 (1)(b) prior to their expiration date, but whose initial certificate expired after June 30, 2004, because they applied for certification too late, may apply for such continuing certificate and will be issued such certificate.

(9) Any person with a valid initial ESA certificate granted under previous standards of the professional educator standards board shall meet requirements for and apply for the continuing certificate by the expiration date on the initial certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for a continuing certificate under the provisions of WAC 181-79A-250 (1)(c) prior to their expiration date, but whose initial certificate expired after June 30, 2005, because they applied for certification too late, may apply for such continuing certificate and will be issued such certificate.

AMENDATORY SECTION (Amending WSR 08-03-100, filed 1/20/08, effective 2/20/08)

WAC 181-79A-145 Levels and validity of certificates.
Two levels of certification may be issued.

(1) Initial and continuing certificates: Teachers with program completion dates through August 31, 2000, administrators with program completion dates through August 31, 2004, and educational staff associates with program completion dates through August 31, 2005, will be issued the following levels of certificates: Provided, That initial and continuing teachers' certificates after August 31, 2000, initial and continuing principal and program administrator certificates after August 31, 2004, and initial and continuing educational staff associate certificates after August 31, 2005, will be issued only to previous Washington certificate holders, pursuant to WAC 181-79A-123:

(a) Initial certificate. The initial teacher certificate is valid for four years and the initial administrator and educational staff associate certificates are valid for seven years. Initial teacher certificates shall be subject to renewal pursuant to WAC 181-79A-250(1) and 181-79A-123. Initial administrator and educational staff associate certificates shall not be subject to renewal. Initial administrator and educational staff associate certificate holders shall be issued a continuing certificate if they meet the requirements for such certificate. Initial administrator and educational staff associate certificate holders shall be issued a residency certificate if their initial certificate has ~~((lapsed))~~ expired or they do not meet the requirements for a continuing certificate.

(b) Continuing certificate. The continuing certificate is valid on a continuing basis as specified in WAC 181-79A-250(3).

(2) Residency and professional certificates: Teachers, administrators, and educational staff associates with program completion dates commencing with the dates indicated below will be issued the following levels of certificates:

(a) Residency certificate. The residency certificate will be issued to teachers beginning September 1, 2000, to principal/program administrators beginning September 1, 2004,

and to educational staff associate school counselors, school psychologists, and school social workers no later than September 1, 2005.

(b) The first issue of a residency certificate for teachers, principals, program administrators, and educational staff associates shall be valid until the holder has completed two consecutive years of successful service in the role in Washington with a school district, state approved private school, or state agency that provides educational services for students. When the ~~((teacher,))~~ principal, program administrator, or educational staff associate completes two consecutive years of successful service in the role in the state with the same employer, their residency certificate will be reissued with a five-year expiration date; provided, that the second consecutive year of successful service in the role will be considered to be complete for purposes of reissuance if a contract for the third such year has been signed and returned to the employer. Prior to the expiration date, the candidate must earn a professional certificate or meet residency renewal requirements under WAC 181-79A-250 ~~((2)(b) and (e))~~.

(c) For teachers, after September 1, 2011, a first issue teacher residency certificate remains undated until the teacher is eligible to register for the professional certificate assessment under WAC 181-79A-206, at which time the residency certificate is dated for three years as verified by the certification office of the superintendent of public instruction: Provided, That teachers who hold an undated initial residency certification and teach in nonpublic school settings as defined under chapter 180-55 WAC are considered to hold a valid certificate and may participate in the professional certificate requirements by submitting proof of experience under WAC 181-79A-206.

(d) Professional certificate. The professional certificate will be issued to teachers beginning September 1, 2001, to principals/program administrators beginning September 1, 2007, and to educational staff associate school counselors, school psychologists, and school social workers beginning September 1, 2007. The professional certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-250. Provided, That a professional teacher's certificate based on the possession of a valid teacher's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 (3)(b) or 181-79A-206 (3)(a) shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater. Provided further that a professional educational staff associate certificate for school counselors based on the possession of a valid school counselor's certificate issued by the National Board for Professional Teaching Standards National Board Certification pursuant to WAC 181-79A-257 or 181-79A-206 shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(3) First peoples' language, culture, and oral tribal traditions certificates: The first peoples' language, culture, and oral tribal traditions certificate will be issued beginning in January 2007. The first peoples' language, culture, and oral tribal traditions certificate is valid for five years and shall be subject to renewal pursuant to WAC 181-79A-252.

AMENDATORY SECTION (Amending WSR 07-04-003, filed 1/24/07, effective 2/24/07)

WAC 181-79A-231 Limited certificates. Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in

the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from a regionally accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter

upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed thirty consecutive school days during the school year in any one assignment. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators whose state of regular Washington certificates have expired; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at regionally accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d).

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for specific positions may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold the appropriate degree and have substantially completed a program of preparation in accordance with Washington requirements for certification: Provided, That a qualified person who holds regular certification is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That a candidate for emergency certification as a school counselor, school psychologist, or social worker shall be the best qualified of the candidates for the position as verified by the employing school district and shall have completed all course work for the required master's degree with the exception of the internship: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in an approved school psychologist preparation program and shall be participating in the required internship.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing or residency certificate has ((lapsed)) expired according to WAC 181-85-040 or 181-79A-251 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must complete any ((continuing)) certificate reinstatement requirements established by the professional educator standards board within two years of the date the holder was issued the transitional certificate in order to continue to be employed: Provided, five years has elapsed since the final renewal expired and the teacher registers and passes the professional certificate assessment within two years under WAC 181-79A-251. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

(8) Provisional alternative administrative certificate.

(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.

(b) The certificate is valid for one year from date of issue.

(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recom-

mendation that the person be issued a residency principal certificate upon successful completion of the program.

AMENDATORY SECTION (Amending WSR 10-08-018, filed 3/29/10, effective 4/29/10)

WAC 181-79A-250 Initial((/residency)) and continuing((/professional)) certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial((/residency)) and continuing((/professional)) certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply.

(2) ((Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program. Individuals who hold a residency certificate that expires in 2010 or 2011 may have the certificate renewed for two years by registering for the external assessment pursuant to WAC 181-79A-206. Provided, that individuals who are unable to complete the professional certificate program by the expiration date on the two year renewal who have not taught for any portion of the nine years between employment and expiration date of the renewal can obtain an additional two year renewal upon verification they had been unemployed during those years, been on a leave of absence or were unemployed due to a reduction in force.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have their residency certificates renewed for one additional five year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work (normally one hundred level or higher) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) An individual who completes a national board certification assessment but does not earn national board certification, may use that completed assessment to renew the residency certificate for two years.

(b) Principals/program administrators.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board approved residency certificate program and taken since the issuance of the last residency certificate.

(3)) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who

would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall ~~((lapse)) expire~~ if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such ~~((a lapsed)) an expired~~ continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

((4) Professional certificate.

(a) Teachers.

~~(i) A valid professional certificate may be renewed for additional five year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued. An expired professional certificate may be renewed for an additional five year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection. Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:~~

~~(A) One or more of the following three standards outlined in WAC 181-78A-540:~~

~~(I) Effective instruction;~~

~~(II) Professional contributions;~~

~~(III) Professional development.~~

~~(B) One of the salary criteria specified in RCW 28A.415.023:~~

~~(I) Is consistent with a school based plan for mastery of student learning goals as referenced in RCW 28A.320.205, the annual school performance report, for the school in which the individual is assigned;~~

~~(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;~~

~~(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;~~

~~(IV) Is specifically required to obtain advanced levels of certification; or~~

~~(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.~~

~~(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.~~

(b) Principals/program administrators.

~~(i) A professional certificate may be renewed for additional five year periods for individuals employed as a principal, assistant principal or program administrator in a public school or state board of education approved private school by:~~

~~(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b).~~

~~(B) Documented evidence of results of the professional growth plan on student learning.~~

~~(ii) Individuals who complete the requirements of the annual professional growth plan to renew their administrator professional certificate may use that completed plan to waive thirty hours of continuing education requirements for their continuing or professional teaching or education staff associate certificate.~~

~~(iii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or state board of education approved private school may have their professional certificate renewed for one additional five year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board approved professional certificate program, and taken since the issuance of the last professional certificate.~~

~~(c) School counselors, school psychologists, or school social workers.~~

~~(i) A professional certificate may be renewed for additional five year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, state board of education approved private school, or in a state agency which provides educational services to students by:~~

~~(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:~~

~~(I) Emphasize continuous learning;~~

~~(II) Positively impact student learning; and~~

~~(III) Reflect contributions to the school, district, and greater professional community; or~~

~~(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current perfor-~~

~~mance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).~~

~~(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or state board of education approved private school may have their professional certificate renewed for an additional five year period by:~~

~~(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or~~

~~(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or~~

~~(C) Provided that, a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national board certificate, whichever is greater.))~~

NEW SECTION

WAC 181-79A-251 Residency and professional certification. Renewal and reinstatement.

(1) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Prior to September 1, 2011, individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (1)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate administrator that the candidate is enrolled in a state approved professional certificate program or has registered for the professional certificate assessment under WAC 181-79A-206.

(ii) Beginning September 1, 2011, individuals who hold, or have held, residency certificates have three options for renewal past the first three-year certificate:

(A) Candidates who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;

(B) Candidates who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by registering for the professional certificate assessment or may permit their certificate to lapse until such time they register for the professional certificate assessment.

(C) Candidates whose three-year residency certificate has lapsed may receive a two-year renewal by registering for the professional certificate assessment.

(iii) A residency certificate expires after the first renewal if the candidate has taken no action to achieve the professional certificate, provided: When the first two-year renewal

on residency certificates expires, teachers have two renewal options:

(A) Teachers who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(B) Teachers who were unemployed or employed less than full-time during the first two-year renewal may permit their certificate to lapse and receive a second two-year renewal by registering for the professional certification assessment.

(iv) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years.

(v) Teachers who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than five years following the final residency expiration: Provided, That the teacher registers and passes the professional certification assessment within two years.

(vi) Teachers that hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors, school psychologists, or school social workers.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional

certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(2) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing the professional growth plan as defined in WAC 181-79A-030 until September 1, 2012. Beginning September 1, 2012, only the professional growth plan developed in collaboration with the professional growth team as defined in WAC 181-79A-030 is required for renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate may use that completed plan to waive thirty hours of continuing education requirements for their professional teaching certificate. Until September 1, 2012, an expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards outlined in WAC 181-78A-540:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in WAC 392-121-262.

(I) Is consistent with a school-based plan for mastery of student learning goals as referenced in WAC 329-121-262, the annual school performance report, for the school in which the individual is assigned;

(II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

(III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

(IV) Is specifically required to obtain advanced levels of certification; or

(V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.

(ii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a principal, assistant principal or program administrator in a public school or state board of education-approved private school by:

(A) Completion of a professional growth plan that is developed and approved with the superintendent, superintendent designee, or appointed representative (e.g., educational service district personnel, professional association or organization staff, or peer from another district), and that documents formalized learning opportunities and professional development activities that:

(I) Emphasize continuous learning;

(II) Positively impact student learning;

(III) Relate to the six standards and "career level" benchmarks defined in WAC 181-78A-270 (2)(b);

(IV) Explicitly connect to the evaluation process;

(V) Reflect contributions to the school, district, and greater professional community; and

(VI) Identify areas in which knowledge and skills need to be enhanced.

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or state board of education-approved private school may have their professional certificate renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.

(c) School counselors, school psychologists, or school social workers.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor, school psychologist, or school social worker in a public school, state board of education-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed and approved with the principal or principal designee, and that documents formalized learning opportunities and professional development activities that:

- (I) Emphasize continuous learning;
- (II) Positively impact student learning; and
- (III) Reflect contributions to the school, district, and greater professional community; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor, school psychologist, or a school social worker in a public school or state board of education-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(C) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-253 Reinstatement of continuing certificates. ((Only)) A continuing certificate may be reinstated. A holder of a lapsed, surrendered, or revoked continuing certificate at the time of application for reinstatement of such certificate must submit the following:

(1) Character evidence as required by WAC 181-79A-150(2) for candidates for certification.

(2) In accordance with RCW 28A.410.110, a revoked certificate may not be reinstated within one calendar year from the date of revocation.

(3) Provided, That no certificate may be reinstated if more than five calendar years has passed since the date of surrender or revocation; however, such applicants may apply pursuant to WAC 181-79A-124 for a new certificate under requirements in effect at the time of application.

WSR 10-12-108
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed June 2, 2010, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-061.

Title of Rule and Other Identifying Information: The department proposes to amend WAC 388-450-0015 What types of income does the department not use to figure out my benefits?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on July 6, 2010, at 10:00 a.m.

Date of Intended Adoption: No earlier than July 7, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSH-SRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 6, 2010.

Assistance for Persons with Disabilities: Contact Jennifer Johnson, DSHS rules consultant, by June 22, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment will exclude the federal \$25 supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009 as income or a resource when determining eligibility for cash, medicaid, and Basic Food benefits.

Reasons Supporting Proposal: On November 6, 2009, the president signed the federal Worker, Homeownership, and Business Assistance Act of 2009. Section 8 of the act requires that the \$25 federal supplemental unemployment compensation benefit be excluded as income or a resource when determining eligibility and benefits for the supplemental nutrition assistance program or SNAP. SNAP is administered under the Washington Basic Food program in Washington.

As federal regulations require these funds to be excluded for medicaid and SNAP, the department will exclude the payments for cash in order to provide consistent treatment of the payment across program lines.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.510, and 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Aurea Figueira-Rogers, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4623.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by setting standards used to determine eligibility and benefit levels for the Washington Basic Food program.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

May 24, 2010

Katherine I. Vazquez [Vasquez]
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-15-085 [and 09-16-095], filed 7/14/09 [and 8/4/09], effective 11/15/09)

WAC 388-450-0015 What types of income does the department not use to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009.

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

((e))) (f) Energy assistance payments;

((f))) (g) Educational assistance we do not count under WAC 388-450-0035;

((g))) (h) Native American benefits and payments we do not count under WAC 388-450-0040;

((h))) (i) Income from employment and training programs we do not count under WAC 388-450-0045;

((i))) (j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

((j))) (k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

((k))) (l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

((l))) (m) Payments we are directly told to exclude as income under state or federal law.

((m))) (n) For cash and Basic Food: Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

((n))) (o) For Basic Food only: The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

((e))) (p) For medical assistance: Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 10-12-122
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**
[Filed June 2, 2010, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-151 on March 24, 2010.

Title of Rule and Other Identifying Information: WAC 232-28-299 Mandatory report of hunting activity.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515, on July 16, 2010, at 8:30 a.m.

Date of Intended Adoption: July 16, 2010.

Submit Written Comments to: Wildlife Program commission meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by June 25, 2010.

Assistance for Persons with Disabilities: Contact Susan Yeager by July 7, 2010, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise the reporting requirements for hunters to make them consistent with the new permit hunts established by category.

Reasons Supporting Proposal: To make hunter reporting rules consistent with recent changes to permit hunts by category rather than species.

Statutory Authority for Adoption: RCW 77.12.047, 77.15.280, 77.32.020, and 77.32.070.

Statute Being Implemented: RCW 77.12.047, 77.15.-280, 77.32.020, and 77.32.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule applies to recreational hunters not businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are not related to hydraulics regulations.

June 2, 2010
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 07-292, filed 12/13/07, effective 1/13/08)

WAC 232-28-299 Mandatory report of hunting activity. (1) All hunters purchasing a hunting license must report their hunting activity for deer, elk, bear, or turkey.

(a) Hunters must report hunting activity, for each tag and permit acquired, by January 31 or within 10 days after the close of an eligible hunt, whichever date is later.

(b) Reports must be made using the department's designated automated telephone hunter reporting system (toll free) or internet hunter reporting system.

(c) Any hunter not reporting, for each tag and permit acquired, by the reporting deadline will be in noncompliance of reporting requirements.

(d) Compliance will be credited for each ((species for which a) transport tag ((is)) and permit acquired.

(2) As an incentive for prompt reporting, all ((successful)) hunters ((who report harvest within 10 days of killing an animal and unsuccessful hunters)) who report by midnight January 10 or within 10 days after the last day of their permit hunt will be entered into a drawing for special deer and elk incentive permits. To be eligible for the drawing, hunters must report their hunting activity for each transport tag and permit acquired.

(3) Hunters who have not reported hunting activity by the reporting deadline for deer, elk, bear, or turkey tags and permits acquired the previous year will be required to pay a \$10 penalty before a new license that includes deer, elk, bear, or turkey tags will be issued. A hunter may only be penalized a maximum of \$10 during a license year.

WSR 10-12-126
PROPOSED RULES
DEPARTMENT OF COMMERCE

[Filed June 2, 2010, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-24-046.

Title of Rule and Other Identifying Information: The department is proposing an interlocal terms and conditions rule that would be adopted as new chapter 365-198 WAC.

Proposed

Hearing Location(s): Puget Sound Regional Council, 1011 Western Avenue, Suite 500, Seattle, WA 98104, on July 14, 2010, at 10:00 a.m. - 12:00 p.m.

Date of Intended Adoption: August 11, 2010.

Submit Written Comments to: Heather Ballash, P.O. Box 42525, Olympia, WA 98504-2525, e-mail heather.ballash@commerce.wa.gov, fax (360) 664-3123, by July 22, 2010.

Assistance for Persons with Disabilities: Contact Heather Ballash by July 1, 2010, TTY (360) 586-0772 or (360) 725-3044.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing a new chapter 365-198 WAC to provide an alternative to an interlocal agreement to cities and counties participating in the regional transfer of development rights (TDR) program for central Puget Sound. This includes Pierce, King, Snohomish, and Kitsap counties and the cities within them. The rule provides terms and conditions that they may adopt by reference in lieu of an interlocal agreement to TDR. The rule is intended to facilitate participation by cities and counties in the TDR program. The rule would be strictly voluntary.

Reasons Supporting Proposal: Adoption of the rule was recommended by an advisory committee convened by the department pursuant to RCW 43.362.020 (as enacted by the legislature in section 3, chapter 482, Laws of 2007). The rule was recommended as a tool to facilitate transfers of development rights between counties and cities under the regional TDR program. Currently, a county and city enter into an interlocal agreement to transfer development rights. The rule would allow a county and city to adopt the terms and conditions of an interlocal agreement as set out in the rule by reference, rather than having to negotiate a formal interlocal agreement. Cities and counties have indicated that this would make the process of transferring development rights easier. Based on the committee recommendations, legislation was enacted and signed into law by the governor directing the department to adopt the rule (RCW 43.362.050).

Statutory Authority for Adoption: RCW 43.362.050.

Statute Being Implemented: RCW 43.362.050.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No comments or recommendations.

Name of Proponent: Washington state department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Heather Ballash, Olympia, (360) 725-3044; Implementation: Leonard Bauer, Olympia, (360) 725-3055; and Enforcement: The rule contains no enforcement authority.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 365-198 WAC provides counties and cities an alternative to entering an interlocal agreement to transfer development rights across jurisdictions. Use of the rule is strictly voluntary. The rule will not directly regulate small businesses; rather it provides a framework or a process for the terms and conditions that need to be included in an interlocal agreement for transfers of

development rights. The rule is a procedural (nonsubstantive) rule. Counties, cities and towns can adopt the framework developed by the department, or they can choose to enter into an interlocal agreement under chapter 39.34 RCW. There are no standards within the rule that are applied directly to small businesses, therefore the rule will not impose costs on businesses within an industry and the requirement to prepare a small business economic impact statement is not triggered.

A cost-benefit analysis is not required under RCW 34.05.328. The department is not listed as one of the agencies to which this section applies, and does not wish to make this section voluntarily applicable to the rule per subsection (5)(a)(ii). Therefore, unless subsection (5)(a)(ii) is invoked by the joint administrative rules review committee after the filing of the CR-102, no cost-benefit analysis needs to be prepared for this rule.

The TDR rule will not subject a "violator" of the rule to a penalty/sanction; it does not establish, alter or revoke a standard for a license; nor does it adopt or amend a regulatory program. The purpose behind the TDR rule is to streamline the process for cities and counties to establish an interlocal agreement (in lieu of using chapter 39.34 RCW to develop and enter into their own agreement).

June 2, 2010

Cheryl L. Smith
Rules Coordinator

Interlocal Terms and Conditions for the Transfer of Development Rights

Draft Rule - Chapter 365-198 WAC

May 24, 2010

NEW SECTION

WAC 365-198-010 Authority and purpose (1) Chapter 43.362 RCW establishes a regional transfer of development rights program in central Puget Sound, including King, Pierce, Kitsap, and Snohomish Counties and the cities and towns within these counties. A transfer of development rights program is a market-based exchange mechanism that encourages the voluntary transfer of development rights from sending areas that a community wants to conserve to receiving areas where growth and the infrastructure to support growth are planned. Participation in the regional transfer of development rights program by counties, cities and towns is optional.

(2) The purpose of this chapter is to make it easy to transfer development rights from counties to cities and towns in the regional transfer of development rights program. The purpose of the regional transfer of development rights program is to conserve resource, rural and other land prioritized for conservation consistent with RCW 43.362.040 and county transfer of development right programs, and to encourage growth in cities and towns consistent with the state growth management act under chapter 36.70A RCW.

(3) The purpose of this chapter is to adopt by rule terms and conditions of an interlocal agreement for transfers of development rights between counties, cities, and towns. Counties, cities, and towns participating in the regional transfer of development rights program have the option of adopting the terms and conditions by reference to transfer development rights across jurisdictional boundaries as an alternative to entering into an interlocal agreement under chapter 39.34 RCW. If a city or county chooses to adopt the terms and conditions provided in this rule, nothing in this chapter prohibits the city or county from adopting additional terms and conditions in the adopting ordinance or resolution.

(4) This chapter shall be deemed to provide an alternative method to an interlocal agreement for transferring development rights between a county and city or town under the regional transfer of development rights program, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in counties, cities and towns. Nothing in this chapter prohibits a county, city, or town from entering into an interlocal agreement under chapter 39.34 RCW to transfer development rights under the regional program.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 365-198-020 Applicability (1) This chapter applies to transfers of development rights between King, Pierce, Kitsap and Snohomish Counties and the cities and towns within these counties. This chapter only applies to transfers from county-designated sending areas consistent with RCW 43.362.040 to city or town-designated receiving areas. Transfers of development rights may be between any county and any city or town within the four-county region. A transferring county shall consult in good faith with the county in which a city is located in regards to transfers of development rights between counties and cities, and the subsequent designated receiving area and receiving area ratio in the city or town.

(2) Utilization of this chapter for transfers of development rights between King, Pierce, Kitsap and Snohomish Counties and the cities and towns within these counties is optional.

(3) Prior to using this chapter for transfers of development rights, a county must adopt transfer of development rights policies or regulations that designate sending areas consistent with RCW 43.362.040 and procedures to implement the regional transfer of development rights program.

(4) Prior to using this chapter for receiving development rights, a city or town must adopt policies or regulations that designate receiving areas and state the receiving area ratio or ratios for rights to be received.

(5) The terms and conditions that are adopted by reference by a city or town in sections 4 and 6 are not binding on the city or town unless the transferring county has also adopted required language in sections 5 and 6 by reference. Conversely, the terms and conditions that are adopted by reference by a transferring county in sections 5 and 6 are not binding on the county unless the receiving city or town has

also adopted required language in sections 4 and 6 by reference.

NEW SECTION

WAC 365-198-030 Definitions The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of commerce.

(2) "Development rights credit" means the tradable good representing development rights. Development rights credits are purchased and sold, either on the open market or through a transfer of development rights bank. For sending site landowners, credits are assigned and certified by the transferring county based on the number of development rights assigned to their property pursuant to the county's transfer of development rights program. For developers, credits are based on the receiving area ratio.

(3) "Receiving area ratio" means the number or character of development rights that are assigned to a development right for use in a receiving area. Development rights in a receiving area may be used at the discretion of the receiving area jurisdiction, including but not limited to additional residential density, additional building height, additional commercial floor area, or to meet regulatory requirements. The receiving area jurisdiction exercises its discretion regarding the use of development rights when it adopts policies or regulations to allow the use of development rights.

(4) "Receiving areas" are lands within and designated by a city or town in which transferable development rights from the regional transfer of development rights program established by this chapter and certified by the transferring county may be used.

(5) "Receiving cities and towns" mean the cities and towns that have chosen to participate in the regional transfer of development rights program by receiving development rights pursuant to RCW 43.362.060.

(6) "Regional transfer of development rights program" means the regional transfer of development rights program established by RCW 43.362.030 in central Puget Sound, including King, Pierce, Kitsap, and Snohomish Counties and the cities and towns within these counties.

(7) "Sending area" includes those lands designated by the county as sending areas from which transferable development rights can be sold, and that meet conservation criteria as described in RCW 43.362.040 as follows:

(a) Land designated as agricultural or forest land of long-term commercial significance;

(b) Land designated rural that is being farmed or managed for forestry;

(c) Land whose conservation meets other state and regionally adopted priorities; and

(d) Land that is in current use as a manufactured/mobile home park as defined in chapter 59.20 RCW.

(8) "Sending area ratio" means the number of development rights that a sending area landowner can sell per the transferring county's transfer of development rights program.

(9) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transfer-

ring them to a receiving area for the purpose of increasing development density or intensity in the receiving area.

(10) "Transfer of development rights bank" means an entity operated by a county or other public agency or private organization for the purpose of buying, selling, and holding development rights or facilitating private development right transactions between landowners and developers.

(11) "Transferable development right" means a right to develop one or more residential units, including fractions of residential units, in sending areas that have been certified by the transferring county, and can be sold and transferred for use consistent with:

(a) A transferring county's adopted program and the regional transfer of development rights program; and

(b) A receiving ratio adopted by the city or town for development in a designated receiving area.

(12) "Transferring county" means the county that has agreed to participate in the regional transfer of development rights program pursuant to RCW 42.362.060.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 365-198-040 Terms and conditions for cities and towns (1) Cities and towns that choose to use this chapter as an alternative to an interlocal agreement must adopt the following terms and conditions by reference to this chapter in an ordinance or resolution:

(a) The city or town has adopted policies or regulations for receiving areas per attached ordinance(s) or resolution(s);

(b) Upon good faith consultation with the transferring county, and the county from within which the city is located, the city or town has designated receiving areas in the city or town within which transferable development rights or development rights credits may be used per attached ordinance(s) or resolution(s);

(c) Upon good faith consultation with the transferring county, and the county from within which the city is located, the city or town has adopted receiving area ratio or ratios for the transferable development rights or development rights credits to be received per attached ordinance(s) or resolution(s);

(d) The city or town, in consultation with the transferring county, and the county from within which the city is located, shall develop a process to notify the county when it has approved the use of transferable development rights or development rights credits in a specific project in the designated receiving area. For purposes of this chapter, "approved" occurs at the issuance of the first building permit for a project using development rights credits by the city or town's planning department; and

(e) The city or town shall work with the transferring county and the department to identify performance measures consistent with RCW 43.362.070 to report to the transferring county and the department.

(2) Optional terms that a city or town may adopt verbatim or by reference are:

(a) Upon good faith consultation with the transferring county, the city or town shall identify the sending areas from

which the city or county agrees to accept transferable development rights.

(b) The city or town has estimated the capacity for development with transferable development rights (or development rights credits) from the transferring county per attached ordinance(s) or resolution(s).

(c) The city or town shall establish and operate a transfer of development rights bank to purchase, sell, and hold development rights.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 365-198-050 Terms and conditions for counties

(1) Counties that choose to use this chapter as an alternative to an interlocal agreement must adopt the following terms and conditions by reference to this chapter in an ordinance or resolution:

(a) The county has adopted policies, regulations and administrative procedures to implement the regional transfer of development rights program, including but not limited to:

(i) Facilitating and promoting the qualification and certification of transferable development rights to eligible property owners for the sale of their transferable development rights from properties in the county's designated sending areas consistent with RCW 43.362.040;

(ii) Establishing procedures to facilitate the sale of transferable development rights or development rights credits; and

(iii) Establishing procedures to require, maintain, and enforce deed restrictions on a sending site from which transferable development rights or development rights credits are purchased in order to prohibit those sites from being developed in violation of deed restrictions.

(b) The county shall notify receiving cities and towns by December 31 of each year the number of available development rights credits remaining in designated sending areas.

(i) If the city or town, in consultation with the transferring county, has identified the sending area or areas from which it has agreed to accept transferable development rights the notification shall indicate the number of credits remaining in that sending area for the respective city or town.

(ii) If the county administers a transfer of development rights bank, annual notification of transactions shall be provided.

(2) Optional terms that a county may adopt by reference to this chapter in an ordinance or resolution:

(a) The county shall establish and operate a transfer of development rights bank to purchase, sell, and hold development rights.

(b) The county shall facilitate private transferable development rights transactions between willing sellers and buyers.

NEW SECTION

WAC 365-198-060 Joint terms and conditions for counties, cities and towns

Counties, cities, and towns that choose to use this chapter as an alternative to an interlocal agreement must adopt the following joint terms and condi-

tions by reference to this chapter in an ordinance or resolution:

(1) The county and city or town shall establish an evaluation and monitoring program based on quantitative and qualitative performance measures developed by the department for monitoring the regional transfer of development rights program under RCW 43.362.070.

(2) The county and city or town shall enter into a dispute resolution process through mediation, with an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any terms and conditions in this chapter adopted by reference. The parties shall use the mediation process in good faith to attempt to come to agreement early in the process, and prior to any appeals or litigation that they might otherwise be entitled to bring.

(3) The term and conditions in this chapter adopted by reference shall become effective on the effective date of the adopting ordinance or resolution.

(4) The county, city or town may repeal the provisions of this chapter adopted by reference upon 90 days' written notice by the transferring county to the cities or towns or by cities and towns to the transferring county if:

(a) The city or town's development regulations allowing the use of development rights credits, or the provisions of the county's development regulations allowing transfer of development rights to cities are held invalid by any court of competent jurisdiction in a final judgment no longer subject to appeal; or

(b) The county, city or town materially defaults in the performance of the obligations as set forth in provisions of this chapter adopted verbatim or by reference, and fails to cure the default within thirty (30) days' of receipt of written notice from the county, city or town.

(5) A city or town's repeal of the terms and conditions in this chapter adopted by reference shall not affect the use of development rights credits previously certified by the county. Development credits certified by the county prior to repeal by the city or town that have not been used in the city or town's receiving area may be used in the county's or another city or town's designated receiving area.

(6) The city or town shall indemnify and hold harmless the transferring county and its officers, agents and employees or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the city or town, its officers, agents, and employees, or any of them, in performing obligations pursuant to this chapter. In the event that any suit based upon such a claim, action, loss, or damage is brought against the county, the city or town shall defend the same at its sole cost and expense, provided that the transferring county retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the transferring county and its officers, agents, employees, or any of them, or jointly against the city or town and transferring county and their respective officers, agents, and employees or any of them, the city or town shall satisfy the same.

(7) The transferring county shall indemnify and hold harmless the city or town and its officers, agents and employees, or any of them from any and all claims, actions, suits, lia-

bility, loss, costs, expenses, and damages of any nature whatsoever, by reason or arising out of any negligent action or omission of the transferring county, its officers, agents, and employees, or any of them, in performing obligations pursuant to this chapter. In the event that any suit based upon such a claim, action, loss, or damage is brought against the city or town, the transferring county shall defend the same at its sole cost and expense, provided that the city or town retains the right to participate in said suit if any principle of governmental or public law is involved, and if final judgment be rendered against the city or town and its officers, agents, and employees, or any of them, or jointly against the city or town and county and their respective officers, agents, and employees, or any of them, the county shall satisfy the same.

(8) The county and city or town acknowledge that if the claims, actions, suits, liability, loss, costs, expenses and damages referenced in subsections (6) and (7) of this section are caused by or result from the concurrent negligence of the city or town, its agents, employees, and/or officers and the county, its agents, employees, and/or officers, the provisions of this chapter adopted by reference shall be valid and enforceable only to the extent of the negligence of each party, its agents, employees and/or officers.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 365-198-070 Template for adopting terms and conditions The department shall provide an ordinance or resolution template for adopting terms and conditions verbatim by reference consistent with this chapter for use by counties, cities and towns participating in the regional transfer of development rights program.